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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No.

ATLANTIC MARITIME COMPANY and S. LIVANOS & COMPANY, INC.,

Petitioners,

against

A. BRADLEY RANKIN, Administrator of the Estate of LINDEVILLE TAYLOR, Deceased.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above entitled case on December 19, 1950 (32).*

THE OPINIONS BELOW.

The opinion of the Court of Appeals (23-28), is reported at 179 F. 2d 597, sub nom. *Taylor* vs. *Atlantic Maritime Co., et al.*

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* References are to pages of the Record.

The opinion of the District Court (14-17), is reported at 86 F. Supp. 496, sub nom. *Taylor* vs. *Atlantic Maritime Co.*

Jurisdiction.

Judgment of the Court of Appeals was entered and filed on December 19, 1950 (32). The jurisdiction of this court is invoked under 28 U. S. C., §1254 (1), and §2101 (c).

Questions Presented.

1. Does the so-called Jones Act, Section 33 of the Act of June 5, 1920 (46 U. S. C., §688), which makes applicable to seamen the provisions of the Federal Employers' Liability Act, govern liability for personal injuries where the employee and his employer are both aliens, and the negligence alleged against the employer occurred upon a vessel owned exclusively by a Panamanian corporation and flying the flag of Panama, while the said vessel was on the high seas and wholly outside the jurisdiction of the United States?

2. In the absence of clearly expressed Congressional intent, should an American statute, enacted for the benefit of American seamen on American ships, be held applicable to injuries received by an alien seaman on a foreign ship on the high seas, merely because of the fact that the alien seaman joined the foreign ship in an American port?

3. Under such circumstances, will the American law supplant and take away from the seaman his rights under the law of the ship's flag?

4. Does the Jones Act apply to injuries on a foreign vessel to a foreign seaman?

The district court held that the Act did not apply. 86 F. Supp. 496 (14-17). The Circuit Court held that it did, solely because the seaman had signed his contract (shipping articles) in the United States. 179 F. 2d 597 (23-28). However, two of the three judges of the court were of the opinion that the Act did not apply. Their decision to hold it applicable was induced by their belief that they were bound by the rationale of a prior decision of the same court in *Kyriakos* v. *Goulandris*, 151 F. 2d 132, with which they did not agree. There was a dissent in the *Kyriakos* case.

Statute Involved.

The Jones Act, Section 33 of the Act of June 5, 1920 (46 United States Code, §688), reads as follows:

> "§688. Recovery for injury to or death of seaman.
>
> "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located. Mar. 4, 1915, c. 153, §20, 38 Stat. 1185: June 5, 1920, c. 250, §33, 41 Stat. 1007."

The statutes applying to railway employees, referred to above, are the Federal Employers' Liability Act, 45 U. S. C. §§51-60.

This court has held that no other federal statutes are incorporated in the Jones Act. *Panama Railroad v. Johnson*, 264 U. S. 375.

The Proceedings.

Lindville Taylor commenced a civil action in the United States District Court for the Southern District of New York, alleging he was a Panamanian national and that both defendants were Panamanian corporations and that he was in the employ of the defendants on board their Steamship *Atlantic Air* as a result of signing shipping articles on August 7, 1947 at Norfolk, Virginia (3-4). He alleged that in March, 1948, he became ill because of the negligence of the defendants, and he invoked the jurisdiction of the district court by predicating his action upon a federal statute, to wit: The Jones Act, Title 46 U. S. C. §688 (4-5). He also invoked the "General Maritime Law of the United States" (5).

In a second cause of action, he alleged that after he became ill, he was not given proper care and treatment on board the vessel nor was he sent to a doctor but, on the contrary, was compelled to work so that his disease was aggravated and developed into tuberculosis (5-6).

In a third cause of action, he asked for maintenance and cure under the "General Maritime Law of the United States" (6).

The defendants,* appearing specially, moved that the court decline jurisdiction of the action, on the ground that

* The parties will be referred to as they were below.

the plaintiff had a full remedy under the laws of Panama where he had his permanent residence and where the defendants were incorporated (8-13).

Since the action was at law and between aliens, there was, obviously, no jurisdiction on the law side, unless the Jones Act governed. However, civil actions are frequently transferred to the admiralty side of the court, *O'Neill* vs. *Cunard White Star Line*, 160 F. 2d 446, and the motion to decline jurisdiction was grounded on the theory that the Jones Act did not apply and that, with the Jones Act out of the case, the admiralty court had a discretion to decline jurisdiction, insofar as the action was based on the general maritime law. *Canada Malting Company* v. *Patterson Co.*, 285 U. S. 413.

The district court noted that from the pleadings and from the testimony given by the seaman in a prior suit on the same cause of action, there was no doubt that the plaintiff was a citizen and resident of the Republic of Panama and that both defendants were Panamanian corporations (14-17). It also found that the plaintiff conceded that his illness arose while the vessel was on the high seas (16). Accordingly, it ruled that the Jones Act had no application (16). For this it cited a case in the highest court of the State of New York, which was on all fours, *Sonnessen* v. *Panama Transport Company*, 298 N. Y. 262, and a previous decision of the United States Court of Appeals for the Second Circuit, *O'Neill* v. *Cunard White Star, Ltd.*, 160 F. 2d 446 (17).

The district court also ruled that the general maritime law of the United States was not applicable, but that the law of Panama was (17). Under these circumstances, it granted the motion to decline to entertain jurisdiction and

relegated the plaintiff to the appropriate forum in Panama (14-17), 86 F. Supp. 496.

This was tantamount to a summary dismissal of the complaint, as the Court of Appeals later held (23).

The plaintiff appealed, but, while the appeal was pending, he died (28). The Court of Appeals for the Second Circuit reversed the lower court and remanded the case for further proceedings conditioned upon the substitutiton of an administrator for the deceased plaintiff (28). Under the Jones Act, and the Railroad law, the Seaman's cause of action survived, 46 U. S. C. §688; 45 U. S. C. §59. This substitution was not accomplished until December, 1950 (30, 31) For that reason, the judgment of the Court of Appeals was not entered until December 19, 1950 (32).

The Court of Appeals affirmed the lower court's discretionary denial of jurisdiction under the general maritime law (23-24) but reversed the holding of the district judge that the Jones Act did not apply (24-28).

The Court of Appeals declined to certify the question to this court but its sole reason was that it would not interfere with this court's control of its calendars, *Taylor* vs. *Atlantic Maritime Co.*, 181 F. 2d 84.

The Decision Below.

The Court of Appeals ruled that the Jones Act applied because the articles had been signed at a United States port (24-28), 179 F. 2d 597.

Two of the judges, Learned Hand and Thomas W. Swan, stated that they felt themselves bound by the rationale of a previous decision of the same court in *Kyriakos* v. *Goulandris*, 151 F. 2d 132, with which they disagreed (27-

28). Free from the constraint of that prior decision, they would have decided that the Jones Act had no application and would have followed the decision to that effect in the case of *Sonnessen* v. *Panama Transport Company*, 298 N. Y. 262. The *Sonnessen* case was on all fours with the *Taylor* case and was decided by the highest court of New York State. This court had denied certiorari in the *Sonnessen* case, 337 U. S. 919.

In fact, the actual decision in the *Kyriakos* case is not a precedent for the decision in the case at bar. There the seaman's contract had been made in the United States but it also appeared that the accident itself had taken place in the United States.

The dissent in the *Kyriakos* case, written by Judge Learned Hand, states that none of the judges had any idea that the Jones Act applied to accidents on foreign vessels while they were on the high seas. 151 F. 2d 132, at page 139. Yet that is what has been held in the case at bar.

Even if it be conceded for the purpose of argument that the *Kyriakos* case controlled the case at bar, the result is that, of the five judges who participated in those two decisions, three (Augustus N. Hand, Jerome L. Frank and Charles E. Clark) are of the opinion that the Jones Act applies under the circumstances of the case at bar, whereas, two judges (Learned Hand and Thomas W. Swan) believe that the Jones Act does not apply. The two minority judges are in accord with the opinion of the highest court of New York State, *Sonnessen* v. *Panama Transport Company*, 298 N. Y. 262, a case on all fours with the case at bar.

REASONS FOR GRANTING THE PETITION.

1. The questions presented here have never been passed upon by this court. They should be.

In *Uravic* v. *Jarka Company*, 282 U. S. 234, a longshoreman was killed on a German vessel while it was lying in an American port. His administrator sued his employer under the Jones Act. This court held the Jones Act applied on the ground that the legislation was presumptively territorial and that, inasmuch as the accident had happened in an American port, the American statutory law controlled. The German registry and German ownership of the vessel was held not controlling in a suit by the American longshoreman against his American employer.

2. The decision in the case at bar is not in harmony with the territorial doctrine announced in the *Uravic* case.

In the *Uravic* case, this court noticed the problem which would have been posed if the accident had been caused to a member of the crew of the German ship and he, as an alien, had sued his alien employer under the Jones Act. It expressly left the question open. 282 U. S. 234 at page 241.

The same question had been left open in *Plamals* v. *Pinar del Rio*, 277 U. S. 151, at page 155.

In *New York Central Railroad* v. *Chisholm*, 268 U. S. 29, a railroad employee, who had been hired in the United States, went with his train to Canada. While there, he suffered an injury which resulted in his death. His widow sued in the United States under the Federal Employers' Liability Act. This court held that the Act had no application. It said that the tort was governed exclusively by

the law of the place where the tort occurred, viz., Canada, and that the legislation of Congress, governing the relationship of railroad employers and employees, had no application.

It is the Federal Employers' Liability Act (which is made applicable to seamen by the Jones Act) on which this present suit is based.

The Court of Appeals, in the case at bar, thought (26) that the *Chisholm* decision had been impaired by the reasoning of this court in the later case of *Cortes* v. *Bull Insular Line*, 287 U. S. 367. However, the *Cortes* case went no further than to hold that standards of negligence under the Jones Act were not controlled by decisions as to what constituted negligence under the Federal Employers' Liability Act. The *Cortes* case did not, in any way impair the doctrine announced in the *Chisholm* case that the statute law was confined in its application to torts occurring within the United States.

3. The case at bar is out of harmony with the *Chisholm* case.

There have been various decisions by lower courts involving questions as to the applicability of the Jones Act to seamen on foreign vessels. This is the first case, however, in which the Jones Act has been held applicable to a foreign seaman and foreign employer for injury on a foreign vessel where the accident occurred on the high seas and not in an American port.

In the following cases, alien seamen sued their alien employers under the Jones Act for injuries received on foreign vessels. In some of them, the seamen signed on in American ports and were injured in an American port and, in others, the seamen signed on in the United States but

were injured abroad. In some cases, the Jones Act was held applicable and, in others, not applicable. In all cases, this court denied certiorari. A synopsis of these cases follows:

The Paula, 91 F. 2d 1001 (C. C. A. 2nd), cert. den. 302 U. S. 750. An alien seaman employed by an alien signed articles at a foreign port for a voyage to the United States. His injury took place while the vessel was in a United States port. The Court of Appeals for the Second Circuit held that the Jones Act did not apply.

Hogan v. *Hamburg-American Line*, 152 Misc. (N. Y.) 405, cert. den. 295 U. S. 749. An alien, who had been long resident in the United States and had been shipping out of American ports for some years, signed on a German vessel in the port of New York for a foreign voyage. He was injured while his vessel was on the high seas. The state court held that the Jones Act did not apply.

Gambera v. *Bergoty*, 132 F. 2d 414 (C. C. A., 2nd Circuit), opinion on rehearing 1943 A. M. C. 47 (not reported elsewhere) cert. den. 319 U. S. 742. An alien seaman, who had resided for some years in the United States and usually shipped out of American ports as a seaman, signed on a Greek vessel at an American port for a voyage to another American port. He was injured while his vessel was in American territorial waters. It was held that the Jones Act applied.

Sonnesen v. *Panama Transport Company*, 298 N. Y. 262, cert. den. 337 U. S. 919. An alien seaman was employed in an American port by a Panamanian corporation and signed articles on a foreign vessel for a foreign voyage and return to the United States. He became ill while his vessel was on

the high seas. The highest court of New York State held that the Jones Act did not apply.

O'Neill v. *Cunard Steamship Company*, 160 F. 2d 446, Court of Appeals, 2nd Circuit, cert. den. 332 U. S. 773. An alien seaman who had been living in the United States for some years and had been shipping from its ports for some years, signed articles in England on a British vessel for a British employer, for a voyage from England to Canada. While his vessel was on the high seas, he was washed overboard. His widow sued his employer under the Jones Act. It was established that the widow herself had resided in the United States for a number of years, and the children of the deceased had been born here and were thus American citizens. The court held that the Jones Act did not apply.

Lower New York state courts have disagreed with the federal courts, also, in cases where the alien seaman is injured in an American port while aboard a foreign vessel which he has joined in an American port. In such circumstances, the New York state courts hold that the Jones Act is not applicable. *Clark* v. *Montezuma Transportation Company Ltd.*, 217 A. D. (N. Y.) 172. They say the foreign law of the ship's flag follows it around the world, just as American law does on American ships. *Panama R. Co.* v. *Johnson*, 289 Fed. 964, affd. 264 U. S. 375; *Wenzler* v. *Robin Line*, 277 Fed. 812; *Bennett* v. *Connelly*, 122 Misc. (N. Y.) 149, affd. 208 App. Div. (N. Y.) 852.

4. These decisions have produced a confusing situation.

5. So far as the present facts are concerned, the highest court of New York State, in the *Sonnessen* case, has an-

nounced a rule which is diametrically contrary to the rule announced in the present case by the federal court.

6. The United States Court of Appeals for the Second Circuit, which decided the present case, is divided among its judges as to the correctness of its own decision.

A diversity of opinion among the judges in a federal circuit court has heretofore moved this court to grant certiorari. *Dickinson* v. *Petroleum Conversion Corporation*, 338 U. S. 507.

Previous decisions on the Jones Act by the Court of Appeals for the Second Circuit have revealed an uncertain basis of decision.

In some cases, the result seems to have been influenced by labelling the alien seaman as an "American seaman" because the seaman involved had long been residing in the United States. Thus, when such an "American seaman" was injured in local territorial waters, he was permitted to sue under the Jones Act. *Gambera* v. *Bergoty*, 132 F. 2d 414. Opinion on rehearing 1943 A. M. C. 47 (not reported elsewhere).

On the other hand, an alien seaman who, by reason of his and his family's long residence in the United States, had a better claim to the title "American seaman", was held not entitled to sue under the Jones Act because his contract was made outside the United States and the accident occurred on the high seas. *O'Neill* v. *Cunard*, 160 F. 2d 446.

And, yet, the fact that an accident happened in a United States port was held not to be controlling in the case of *The Paula*, 91 F. 2d 1001. In that case, the alien seaman was held not to be entitled to the benefit of the Jones Act, because he had signed his articles abroad.

Thus it appears that, in these three cases, the place of the contract has been the only consistently appearing jurisdictional fact. However, it was not the determining factor when the decisions were made. In fact, Judge Learned Hand and Judge Swan, in the present case, have clearly stated that it still should not be the controlling factor.

As long ago as 1921, the same Circuit Court of Appeals said in *The Hanna Nielsen*, 273 Fed. 171, at page 172 (C.C.A. 2nd Circuit), cert. den. 257 U. S. 652 sub. nom. *Hannah Nielson*.

> "If the claim advanced herein be regarded as in contract, the breach being the shipowner's failure properly and reasonably to provide for the safety of libelant, Norwegian law, and that alone, governs the right of recovery; for 'whoever engages voluntarily to serve on board a foreign ship necessarily undertakes to be bound by the law of the country to which the ship belongs.' *The Belgenland*, 114 U. S. 355, 5 Sup. Ct. 860, 29 L. Ed. 152. The seaman's contract in this instance was a Norwegian contract, and so remained throughout. The place where libelant shipped or reshipped is of no moment whatever • • •."

7. The decision in the present case is contrary to the well established rule that the law of the ship's flag controls in tort relations between the crew and their employers for accidents occurring aboard the vessel, no matter where the ship is and regardless of where the contract has been made. Particularly is that true when the vessel is on the high seas.

In *The Belgenland*, 114 U. S. 355, it was stated categorically that the law of the flag prevails in all matters that relate to a maritime contract. In the following cases, the law of the flag was held to control in all matters relating to the "internal economy" or discipline of the ship:

The Scotland, 105 U. S. 24;
The Belgenland, 114 U. S. 355;
United States v. *Rodgers*, 150 U. S. 249;
Cunard v. *Mellon*, 262 U. S. 100, 1923 A. M. C., 552;
Thompson Towing & Wrecking Association v. *McGregor*, 207 Fed. 209, 217-219 (6 C. C. A.);
Rainey v. *New York & P. S.S. Co.*, 216 Fed. 449, 454 (9 C. C. A.);
The Hanna Nielsen, 273 Fed. 171 (2 C. C. A.);
Grand Trunk Ry. Co. v. *Wright*, 21 F. 2d 814 (6 C. C. A.), 1928 A. M. C. 290;
Cain v. *Alpha S. S. Corp.*, 1929 A. M. C. 1484, 35 F. 2d 717 (2 C. C. A.);
Clark vs. *Montezuma Transp. Co.*, 217 App. Div. (N. Y.) 172.

All seamen, whatever their nationality, are taken to be nationals of the country whose flag their vessel flies. *Rainey* v. *N. Y. & P. S.S. Co.*, 216 Fed. 449 at p. 454.

In *Plamals* v. *SS Pinar Del Rio*, 16 F. 2d 984, the court said:

> "That libelant is a Spaniard is immaterial; the case is the same as if he had been an Englishman. *The Hanna Nielsen* (C. C. A.) 273 Fed. 171, citing *The Belgenland*, 114 U. S. 355."

The present case has gone to an extreme in making an exception to the "rule of the flag." It has decided that because the contract was made in the United States, the statutory law of the place of the contract, viz., the Jones Act, governs the relationship of the parties for torts committed on the high seas and, presumably, anywhere in the world, even in the port of Panama where the vessel was

registered and where both the seaman and his employer were resident, and of which country they were nationals. This result was said to have been in the mind of Congress in passing the Jones Act. The supposed intention of Congress was discerned by the court in the prior *Kyriakos* case, 151 F. 2d 132, because of two decisions of this court construing other sections of 46 U. S. Code which dealt with entirely different features.

In the first of those cases, *Patterson* v. *Bark Eudora*, 190 U. S. 169, Congress had provided, 46 U. S. C. §599, that wages could not be paid to any seaman in advance of the time he had earned them. One of the sections of this Code, §599 (e), read as follows:

> "This section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, * * *."

This court held that Congress had the constitutional power to outlaw such payments when made in United States ports, even with respect to foreign vessels and foreign seamen.

The Jones Act (46 U. S. C., §688), which is involved in the case at bar, does not contain any provision making it specifically applicable to foreign shipowners and vessels which sign crews in United States ports. In the absence of such an express provision in the Act, the presumption would be that Congress did not intend that the Jones Act should govern torts committed on the high seas and in all ports all over the world merely because the contracts of shipment had been made in United States ports.

The same section (46 U. S. C. §599) as was involved in *Patterson* v. *Bark Eudora* was before this court in a later case. *Jackson* v. *S.S. Archimedes*, 275 U. S. 463. There,

the advances had been made in a foreign port and, when the seamen arrived in the United States, they sought to prevent their employer from taking credit for the advances on the ground that the advances were condemned by the American statute. The seamen pointed to a clause in the Act which said that payment of such wages should be no defense to a suit by a seaman "* * * whether (such advances were) made within or without the United States or territory subject to the jurisdiction thereof * * *." 46 U. S. C., §599 (a). This court, however, held that the legislation was presumptively territorial and did not apply to advance wages paid outside the United States. The court said that the words of the statute relied on by the seamen applied to advances in foreign ports, only when made to seamen on American vessels.

In its opinions in the *Kyriakos* and *Taylor* cases, the Court of Appeals did not mention the case of *Jackson* v. *The Archimedes*, and, seemingly, was unaware of it. The *Jackson* case demonstrates that Congress has had no intention of controlling acts occurring outside territorial United States waters aboard foreign vessels, even though it has the power to do so, either because the seaman's contract is made here or because the vessel happens to come here.

The other case relied upon by the United States Court of Appeals in the *Kyriakos* and *Taylor* cases, was *Strathearn Steamship Co.* v. *Dillon*, 252 U. S. 348. That case involved a statute of the United States which permits a seaman to demand half his earned wages at ports where the vessel loads or discharges cargo. 46 U. S. C., §597. If the shipowner fails to honor the seaman's demand, the seaman is entitled to leave the ship and obtain the full

wages which are due him to the date of his leaving. A clause in the statute provides:

> "* * * This section shall apply to seaman on foreign vessels while in harbors of the United States and the courts of the United States shall be open to such seamen for its enforcement."

In the *Strathearn* case, it was held that seamen on foreign vessels, arriving at United States ports, were entitled to demand and receive half of their wages under this statute even though it was contrary to their shipping contracts which had been made abroad.

Again, it should be pointed out that there is nothing in any part of the Act involved in the case at bar, viz., the Jones Act, expressly making it applicable to contracts signed here by alien seamen for work on foreign vessels.

It was thought by the majority of the Court of Appeals in the *Kyriakos* case that the *Patterson* and *Strathearn* cases furnished a precedent for holding that it was the intention of Congress likewise to impose the Jones Act upon all contracts by foreign vessels engaging seamen made in the United States, and that Congress intended that the Jones Act should apply in such circumstances when the injury took place in a port of the United States. *Kyriakos* v. *Goulandris*, 151 F. 2d 132.

Judge Learned Hand dissented in that case. He said, page 139:

> "* * * We cannot fix the liabilities of foreign owners to foreign seamen for injuries occurring at sea, or in other ports than our own; at least, nobody suggests that the Jones Act does so. All we shall accomplish is to hold that, whenever a foreign seaman happens to be injured in one of our ports, he may recover whenever an American seaman might recover. * * *"

However, when Judge Learned Hand later wrote the opinion of the court in the case at bar (*Taylor* v. *Atlantic Maritime*), he stated that the *Kyriakos* decision had, by its rationale, compelled the conclusion that Congress had intended to fix the liabilities of foreign owners and foreign seamen for injuries occurring at sea and at other ports than our own, simply because the seaman's contract had been made in the United States.

Judge Hand said in the *Taylor* case, 179 F. 2d 597 at page 600 (27):

> "• • • To Judge SWAN and me it seems, on the other hand, that, before we impute to Congress the will to change the long settled international understanding that the law of the flag controls in such matters, we should find a more definite expression of that purpose. We of course recognize that it is only a question of interpreting the statute, not of power; *Patterson* vs. *Bark Eudora*, 190 U. S. 169; *Strathearn S.S. Co.* v. *Dillon*, 252 U. S. 348, but the possible consequences of the innovation seem to us to forbid its ready assumption under the facile phrase of the 'policy of the Act'. Nor does the possible disadvantage, at which our view might put American seamen, seem to us considerable enough to imply such a purpose, for there will be, we should suppose, only rare occasions when American seamen will find themselves forced to accept the greatly inferior standards of wages and living which prevail on most, if not all, foreign ships. Moreover, we both find strong support for our view in the decision of the Court of Appeals in *Sonnesen* vs. *Panama Transport Company*, 298 N. Y. 262, which is on all fours with the case at bar. Nevertheless, in spite of what we should hold, were we free, we think that, although *Kyriakos* vs. *Goulandris*, 2 Cir., 151 F. 2d 132, can be distinguished because the injury took place on

shore, the rationale of the opinion went further; and that it construed the Jones Act as imposing its terms upon all owners who sign on crews in an American port."

Thus, the Circuit Court, by over-emphasis of the place of contract as a criterion of the statute's application, has pushed its application to foreign vessels on the high seas and in every harbor of the world. This court, in *Jackson* v. *Archimedes*, 275 U. S. 463, could have pushed the application of the statute involved therein to similar lengths if it had seen fit to overemphasize the significance of the fact that the foreign vessel had finally come to the United States and was, therefore, subject to our laws. But this court, wisely, saw what havoc such a decision would create and left it to Congress, thereafter, to declare its intention expressly. Congress has never done so.

Judges Hand and Swan are similarly aware of the difficulties lurking in the problem. But, apparently, none of the judges of the Court of Appeals are aware that in *Jackson* v. *Archimedes* this court had pointed the way to the correct decision of the case at bar.

The decision below necessarily means that a foreign vessel calling here with an entire crew signed on abroad which has to replace one of its members with a local seaman, whether alien or American, will thereafter be responsible to the one seaman, under the Jones Act, no matter where in the world the vessel goes. With respect to the remainder of the crew, the shipowner will continue to be subject to the law of his flag. It is certain that Congress never intended to produce this incongruity.

We should not lightly impute to Congress the intention to regulate the relations between foreign shipowners and

their alien crews for accidents happening outside American jurisdiction.

The decision below seriously interferes with the laws made by foreign nations to govern the relationship between employers and crews on vessels while away from their home ports. Nearly all maritime nations have special laws which apply to the crews of their vessels and which protect them in case of injury. The Republic of Panama, of which both parties to this litigation were nationals, has a statutory plan for compensating its injured and ill seamen. This came to the attention of a court in *Komaridis* v. *Compania Internacional de Vapores, Ltda.*, 1943 A. M. C. 1437 (not otherwise reported). Great Britain has had a compensation law applicable to seamen since 1906 (6 Edward VII, Chapter 58); France has had such a law since 1898 (see Loi du 9 Avril, 1898; Loi du 29 Decembre, 1905); Italy since 1904; Germany since 1902; and Belgium since 1929. Seamen's rights under the compensation laws of Denmark and Norway have come to the attention of our courts, *Gonzalez* v. *J. Lauritzen*, 1940 A. M. C. 220 (not reported elsewhere); *The Ivaran*, 35 F. Supp. 229. Yugoslavia has a similar law; *Radovic* v. *The Princ Pavle*, 45 F. Supp. 15.

If foreign shipowners are to be subjected to the provisions of American statutory law for injuries occurring while in their home ports or while on the high seas or in other foreign ports, merely because they sign crews on in the United States, then the systems of laws which have been established by foreign nations for dealing with compensation problems, will be completely unworkable. Often, the seamen themselves make contribution to these compensation funds.

Furthermore, if the United States undertakes generally to interfere with the operation of foreign laws, as the Court

of Appeals has sanctioned in the present case, foreign nations will be led ultimately to do likewise, and American shipowners will be subjected to foreign law when seamen on their vessels make contracts in foreign ports and jurisdiction is later obtained over the shipowner therein.

If Congress wishes such a result, then there should be no difficulty on its part in saying so. In the absence of such explicit congressional provision, there is serious reason to doubt that Congress ever intended it.

The questions involved should receive the authoritative attention of this court.

WHEREFORE your petitioners respectfully pray that a writ of certiorari issue to review the decision below.

ATLANTIC MARITIME COMPANY
S. LIVANOS & COMPANY, INC.

By CLETUS KEATING
VERNON S. JONES
Counsel for Petitioners.

Dated: New York, February 5, 1951.

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FILED
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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 607....

ATLANTIC MARITIME COMPANY and S. LIVANOS & CO., INC., owners, operators and agents of the steamship "ATLANTIC AIR",

Petitioners,

against

A. BRADLEY RANKIN, Administrator of the Estate of LINDEVILLE TAYLOR, Deceased,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO APPLICATION FOR WRIT OF CERTIORARI

SILAS BLAKE AXTELL,
ARNOLD W. KNAUTH,
Counsel for Respondent.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. .....

ATLANTIC MARITIME COMPANY and S. LIVANOS & CO., INC., owners, operators and agents of the steamship "ATLANTIC AIR",

Petitioners,

against

A. BRADLEY RANKIN, Administrator of the Estate of LINDEVILLE TAYLOR, Deceased,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO APPLICATION FOR WRIT OF CERTIORARI

The Question

The issue in this case is whether a business concern—in this case Livanos & Co., who are Greek—may set up a business headquarters in New York and run a ship-operating enterprise—in this case eleven Liberty ships, all bought on mortgage from the U. S. Government—centering the business in New York, hiring the crews in U. S. ports out of the American labor market—in this case, Norfolk, Virginia—with Ship's Articles in the English language for round voyages always returning to U. S. ports, and pay-

ing the crews in wages expressed in Dollars, just like any American ship-operating enterprise, and yet be judicially suffered to pretend, by the device of incorporating the Greek personality under the laws of Panama, and registering the ships in Panama, that it is a stranger within our legal gates, offering these transparent legal devices as though they were solid barriers against the application of the Jones Act, 46 U. S. Code 688. The Court of Appeals refused to be deceived.

The petition (on p. 2) phrases the question in four different ways, so arranged as to suggest that this petitioner is a genuine foreigner, alien to our business world, whose contacts with the United States are occasional and remote, and whose relations with its seamen-employees have nothing to do with the United States, its labor laws and policies, and the life of its ports and trade. We urge on the contrary that this case does not represent a single instance, but is part of a great stream, having many and vital impacts upon the United States.

POINT I

The petitioner's cases do not support the allegation that the decision below reveals a situation which requires action by this Court.

The petitioner puts forward eight cases as allegedly revealing a situation of disharmony which this court should pass upon. On examination, only two of those cases are of interest, and only one—the *Sonnesen* case—could be of some real concern. This Court has already and recently denied certiorari in the *Sonnesen* case—in 1949 at 337 U. S. 919*—and we think that denial was proper. We do not think that it merits reconsideration by this Court, and feel confident that the Court will agree.

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* A motion to enlarge the time for application for a rehearing was denied, 337 U. S. 961.

The petitioner says (p. 9 of the petition, last full paragraph) that "This is the first case" on the particular point. We cite, in our Point II, cases dealing with the point over the last thirty years. The point is an old one. It is not novel. It is not in disharmony with a long line of federal cases at all levels. The divergence of the New York State courts is a local matter, of local concern.

Petitioner relies chiefly on

> *Sonnesen* v. *Panama Transport Co.* (1949), 298 N. Y. 262, 82 N. E. 2d 569, certiorari denied, 337 U. S. 919.

It mentions that case three times, with heavy emphasis. Unless we are impressed by that State Court case, the rest of the petition is of no particular federal interest.

First we note that counsel for the employer in the *Sonnesen* case are also counsel for the employer in this *Taylor* case. They urge that the federal and admiralty court should follow a pattern set by a single and common-law State.

Next we note the astonishing fact that neither counsel in the *Sonnesen* case briefed or appealed on the question of jurisdiction as to alien seamen in alien ships. The arguments are well summarized in the State Reporter, 298 N. Y. at 263-265. An inspection of the actual briefs shows that the Reporter's summaries are full and fair. So we discover that the New York State Court of Appeals decided the *Sonnesen* case on a point not briefed. In particular the employer, Panama Transport Co., a Panama company operating its ships under the Panama flag, did not challenge the jurisdiction of the State Court nor question the application of the Jones-FELA Act. It made only these four points: I. The Appellate Division had power to review the question and correctly dismissed the complaint for failure to prove a cause of action "under

any law"; II. The Appellate Division had power to set aside the verdict as against the weight of evidence; III. Plaintiff had failed to prove neglect in medical care; IV. Plaintiff had not proved any right to future maintenance.

Now this Panama Transport Co. is well known to be an affiliate of the Standard Oil Co. of New Jersey. It was first formed to enable Standard Oil to operate tankers to England and France in open circumvention of our Neutrality Law in 1939 and 1940. The Panama flag was not affected by the U. S. Neutrality Law. Some years before, the case of

> *Gerradin* v. *United Fruit Co.* (E. D. N. Y., 1931), 51 F. 2d 417; 1931 A. M. C. 1425; affirmed (C. C. A. 2d, 1932), 60 F. 2d 927; 1933 A. M. C. 81, certiorari denied, 287 U. S. 642,

had established that Americans who operated their boats under the flag of Honduras would have to apply the Jones-FELA Act to their relations with their seamen. The Standard Oil Co. did not propose to stand before the world as seeking to evade our seamen's laws when they put their tankers under the flag of Panama; they were merely getting around the Neutrality Act. They were not trying to upset their general labor relations applicable to their great fleet of tankers. In fact, a search of the reported cases concerning the Panama Transport Co. as a litigant does not reveal any instance where that company—through the same counsel who present the petition for the Atlantic Maritime Co. here—urged the idea that the Jones Act does not apply to its Panama-flag seamen. It has litigated Jones Act cases without raising that point. See, for instance,

> *Anderson* v. *Panama Transp. Co.* (S. D. N. Y., 1942), 1942 A. M. C. 43 and 744 (neither elsewhere reported).

Of course the Jones Act applies to Panama Transport ships; the Company and its seamen would not have it otherwise. So we find the curious fact that the New York Court seized upon the point of jurisdiction and applicability to toss out the case, although neither party raised these questions, and it was an undesirable disturbance of the employer company's policy. In effect the *Sonneson* case merely says that the Courts of New York State will not lend themselves to effectuating the Standard Oil Company's sound labor relations policy in dealing with its sick and injured seamen, under the federal Jones-FELA Act. Fortunately the federal courts are equally open in FELA cases, and in that field do not have to pay regard to the narrow and restrictive views of the State court. It may be unwise and unfortunate for New York to close its state courts to these cases; but that is a matter of state policy which this Court may regret but which it need not necessarily feel moved to change. After all, from the State point of view, Sonnesen was not a New Yorker, and Standard Oil is not a New Yorker, nor is Panama Transport Co. New York may if it wishes reject the Jones Act right which the federal statute has offered to it, or limit it. That is all there is to the *Sonnesen* case.

The *Sonnesen* case merely means that hereafter seamen will be careful to resort to the federal courts and to turn away from those state courts which may feel as New York does. The Jones Act gives the seamen a non-removable option as between the state and the federal court, it will be recollected.

The hostility of the New York State courts to the idea of applying the Jones Act to events on a foreign ship is not new; they denied their workmen the Jones Act right in 1928 and 1929 in

Resigno v. *Jarka* (1928), 248 N. Y. 225, 1928 A. M. C. 1101 (no application for certiorari),

where the longshoreman was killed on board a German ship, and in

> *Uravic* v. *Jarka* (1929), 252 N. Y. 530, wherein certiorari was applied for and granted, the decision being squarely reversed (1931) 282 U. S. 234, 1931 A. M. C. 239, opinion by Justice Holmes for the unanimous court;

in the *Uravic* case the longshoreman was killed on board a different German ship.

Now very curiously the Sonnesen opinion cites the *Resigno* case to support its denial of a remedy to the seaman in the foreign ship, without the least remark that the Resigno doctrine was swept away three years later by the *Uravic* case in this Court. See 298 N. Y. at 267, middle.

Thus the *Sonnesen* case appears as a State situation wherein, either by oversight or perhaps by dogged adherence to a view differing from the view of the United States Supreme Court, the State policy is set against giving relief to these seamen under this federal law. But that is a matter of State discretion. It is not a matter of particular interest to this Court.

And so this Court denied certiorari in the *Sonnesen* case. How the state courts decide their own limits of interest in these cases is a matter of indifference to the federal authority.

The only other case on which the petition places any heavy emphasis is

> The *Paula* (E. D. N. Y., 1937), 17 F. Supp. 555, 1937 A. M. C. 63, affirmed (C. C. A., 2d 1937), 91 F. 2d 1001, 1937 A. M. C. 988 certiorari denied, *Sub nom. Peters* v. *Lauritzen*, 302 U. S. 750.

The petition refers to this case twice. The Paula decision troubled the court which rendered it; upon the re-argument of the *Gambera* case, discussed hereinafter, Judge Learned Hand went to some pains to bolster it, and frankly admitted that the original opinion had not stated the facts quite accurately. See 1943 A. M. C. 47 (not elsewhere reported).

The Paula concerned a Danish ship which signed a German, one Peters, on her Articles at a port in Chile; Peters was thereafter hurt while the Paula was discharging cargo at Jacksonville. He claimed the Jones Act remedy, and the court denied it. Many details of fact are missing. Was the Paula bound for Denmark? It seems that she had been making round voyages in the ore-carrying trade between Chile and Jacksonville and Baltimore. Where did the Paula sign on her crew? Did they sign in Denmark for three years? Or in Baltimore, voyage by voyage? Perhaps the Paula was no more genuinely Danish than the Atlantic Air in this case was Panamanian The case is also unsatisfactory in other ways. Peters, after two months in hospital, found the Paula in Brooklyn, and filed a libel both *in rem* and *in personam* with writ of admiralty attachment, the vessel owner being absent altogether from Brooklyn. But the Jones Act is quite explicit in saying (in the last sentence) that the suit may be brought where the employer resides or has his principal place of business. The Jones Act aspect of the Paula could have been suitably disposed of by saying that the employer resided in Denmark and had no principal place of business at all in the United States. But in the meanwhile other cases had softened the last sentence so that it was construed as applying merely to venue. In any event, the court, speaking through Judge Swan, wrote:

> "That a suit in admiralty between aliens may be entertained or dismissed in the exercise of sound judicial discretion is clear beyond dispute * * * The only

question is whether discretion was abused in this particular case."

He then held that the U. S.-Danish treaty clause giving the Danish Consul exclusive jurisdiction over "controversies" did not apply, because a personal injury is not a controversy. Next he considered the four reasons advanced by Peters' attorney for taking jurisdiction: (1) the cause arose in an American port; (2) the witnesses were here and not in Denmark; (3) he hoped for a larger recovery here than the Danish compensation law would afford; (4) he had incurred debts in the United States during his two months in the hospital and while convalescing. The opinion continued:

> "No one, nor all of these circumstances would justify us in finding that the court abused its discretion. * * * the bare circumstance of where the cause of action arose has not been treated as determinative of the power of the court to exercise discretion * * * The libellant claims not only under the maritime law but also under * * * the Jones Act. He asks us to rule that this applies to an alien seaman on a foreign ship who signed on in a foreign port, if he sustains injury in a port of the United States through the negligence of a fellow seaman. This question was expressly left open in Plamals v. The Pinar Del Rio (1928), 277 U. S. 151, at 155, 1928 A. M. C. 932. Precise authority on it is meagre."

That was in 1937. He then cited two district court cases which had denied the Jones Act remedy to alien seamen where the crews were signed on in distant foreign ports—

in Norway: *The Seirstad* (E. D. N. Y.), 1928 A. M. C. 1241, 27 F. 2d 982;

in India: *The Magdapur* (S. D. N. Y.), 3 F. Supp. 971, 1933 A. M. C. 831.

And he failed to notice Judge Learned Hand's strong opinion in favor of applying the Jones Act to alien seamen in alien ships in

> *Stewart* v. *Pacific S. N. Co., Ltd.* (S. D. N. Y., 1924), 3 F. 2d 329, 1924 A. M. C. 1272;

and Judge Campbell's rather regretful language in the Seirstad, where he said that he too had given a remedy to an alien seaman in

> *The Navarino* (E. D. N. Y.), 7 F. 2d 743, 1925 A. M. C. 1062,

and felt in doubt because this Court had left the question open in

> *Plamals* v. *The Pinar Del Rio, supra.*

Continuing, Judge Swan recited that the benefit of the Jones Act had been extended to American stevedores in foreign ships, to American seamen injured in foreign ships in American ports, to a stevedore of "unproven" nationality in a French ship at the Panama Canal, to an American seaman in an American-owned vessel of foreign registry, and to an alien seaman injured aboard a yacht of foreign registry owned 50 per cent by an American. It is an impressive list showing the liberal construction of this remedial statute, intended for all seamen who trade to our ports.

Coming finally to Peters' case against the Paula, Judge Swan continued:

> "Whether an American seaman on a foreign ship, who had signed on in a foreign port, could claim under the Jones Act, is not entirely clear. In the Uravic opinion, Justice Holmes remarked (282 U. S. at p. 241, 1931 A. M. C. at 243):

> 'If it should appear that, by valid contract or special circumstances seamen in a foreign ship should *not* be protected by the statute, it will be time enough to consider the exception when it is presented.' " (Italics supplied.)

"It is even less clear",

then continued Judge Swan,

> "that a foreign seaman who had signed on *at a foreign port* should have the benefit of the Act." (Italics supplied.)

It is respectfully submitted that the learned court overlooked Justice Holmes' use of the word *not*. Holmes broadly implied that the Jones Act does apply to all seamen who come here, unless it should appear that "by valid contract or special circumstances" it should not protect them. We do not find any anti-Jones Act clause in the contract at bar; nor any special circumstances.

The Paula decision awakened much disturbed controversy; and when Judge Learned Hand wrote the Gambera opinion in 1942 without referring to The Paula, counsel raised the matter upon re-argument:

> *Gambera* v. *Bergoty* (C. C. A. 2d 1942), 1943 A. M. C. 47 (re-argument not elsewhere reported).

Whereupon he wrote:

> "It is true that we did not state the facts in The Paula quite accurately; the libellant in that case signed on in Chile; the ship was Danish; the voyage was from a Chilean port to Brooklyn. None of those facts could make the least difference, however, unless it were that the voyage ended in this country; and that too is immaterial since it does not concern those facts which we hold to bring the libellant at bar (Gambera) within the protected class."

Thus he adhered to the opinion that the Italian, Gambera, was within the class "protected" by the Jones Act. And it whittles down the The Paula doctrine, if indeed it does not quite take the whole sting out of it.

The petitioner's other cases are of small moment.

The Hanna Nielsen (E. D. N. Y. 1920), 267 Fed. 729 (C. C. A. 2d 1921), 273 Fed. 171, certiorari denied, 257 U. S. 652,

antedated the Jones Act. The accident happened on an August-September voyage in 1919; the Jones Act was enacted on June 5th, 1920.

Hogan v. *Hamburg-American Line*, 152 N. Y. Misc. 405, 272 N. Y. S. 690, certiorari denied, 295 U. S. 749,

concerned a seaman who joined a German transatlantic liner at New York and was injured at sea on the voyage to Germany. It was familiar knowledge that these ships signed on crews in Germany, with German Articles, paying wages in marks, and the only issue was whether a single man signing on in New York should have a different law from the others on that account. It was plain that Hogan, after injury, had soon arrived in the German port where the seaman's remedies of the flag were available; and that he elected to return to New York to try for the U. S. remedy. His was not the case of a man on the foreign-flag ship which never sees the ports of her supposed flag. The denial of certiorari to Hogan merely means that the federal court did not feel called on to interfere with the policy of the state court; it was like the denial in the *Sonnesen* case.

O'Neil v. *Cunard* (C. C. A. 2d, 1947), 180 F. 2d 446, 1947 A. M. C. 505, certiorari denied, 332 U. S. 773,

is a somewhat harder case. O'Neil's family lived in New York; he took employment in Liverpool on a ship running to Canada, and suffered his fatal hurt in mid-ocean. The resulting social problem was the support of the family in New York, and the employer Cunard undoubtedly had a very large head office establishment at 25 Broadway. So it was arguable that the employer should give a remedy in New York, and under American law. However, it was evident that other elements making for U. S. jurisdiction were not present. The court decided that the New York relief problem should not be met by the British employer under our Jones Act.

> *Clark* v. *Montezuma* (N. Y. App. Div., 1926), 217 App. Div. 172, 216 N. Y. S. 295, 1926 A. M. C. 954,

suffered from the same difficulty that eventually caused the overthrow of *Resigno* v. *Jarka* and *Uravic* v. *Jarka*, which this Court set right in 1931 (See page 16 of this brief). An American engine-room seaman there accepted work from the Mate of a British ship which was laid up repairing in New York Harbor. There were no Articles. Clark was just a repairman who worked on the ship in port and happened to be employed by the ship instead of by an independent local contractor; he was injured by a negligent fellow servant. The trial court and jury awarded him $1,500 under the Jones Act; the Appellate Division reversed on the theory—which this court declared fallacious five years later—that a local American who works on board a foreign-flag ship in New York Harbor enters into a foreign country where the Jones Act and other American laws do not apply. The case is no longer a valid authority; this court overthrew its doctrine twenty years ago in the Resigno opinion.

This completes the survey of the petitioner's Jones Act cases. The list is short and, it is submitted, not impressive; it does not indicate that there is a problem of disharmony to which this court should devote attention.

POINT II

Numerous cases have applied the Jones Act to alien seamen and foreign ship owners and employers of seamen in many situations for over 27 years.

We now turn to the positive side of the respondent's case. Having shown that the petitioner's cases do not support its argument, we show that the court below decided the respondent's case correctly.

The review of cases begins on June 5, 1920, when the Jones Act was enacted. In 1924 Judge Learned Hand applied the Act to a British ship operator whose services included a route between U. S. Atlantic ports and the west coast of South America. The British line had a principal office in New York. The British ship operator challenged the applicability of the Jones Act to a foreign ship. Judge Hand wrote, in

> *Stewart* v. *Pacific Steam Navigation Co., Ltd.* (S. D. N. Y., 1924), 3 F. 2d 329, 1924 A. M. C. 1272.*
>
> "Only one point is raised on this motion to set aside the service of the summons* and that is that under * * * the Jones Act no action can be brought against a foreign corporation. * * * The general bestowal of jurisdiction is found in the 'right' sentence, the long one; it lays down what the right shall be and against whom it shall exist. * * * This language is general; there is no indication of any purpose to limit it to United States corporations.
>
> "And it would be highly unreasonable to impute any such purpose to Congress, for the result would

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* By oversight, the case was reported as an admiralty case; it was at law, as is indicated by the fact that it was initiated by the service of a summons.

be not only to deprive American seamen of the protection which the Act was meant to give them, when serving in foreign ships, but to give such ships advantage as against American ships. We all know the purpose of Congress is directly the opposite."

And to the argument that a foreign shipowner's principal office would be in some other country, he merely remarked:

"The principal office of a foreign corporation will normally mean the principal place where it does its business in the United States."

Of course in the case at bar, the Atlantic Maritime Co. and Livanos & Co. have their real head offices in New York.

Heredia v. *Davies* (C. C. A. 4th, 1926), 12 F. 2d 500, 1926 A. M. C. 703, affirming (E. D. Va.), 7 F. 2d 741, 1925 A. M. C. 604,

concerned a Peruvian ship which came to Norfolk. At that place, a Peruvian crew member tripped on a defective step and broke his leg; he was put ashore in an American hospital. Judge Groner wrote that jurisdiction ought to be exercised "where the relation of the seaman to the respondent has been severed and where the injury is alleged to have been sustained in an American port, for which a remedy is given by American law, but which is without remedy by Peruvian law." He allowed $400, and the shipowner appealed. The appellate court increased the award to $1,000 and Judge Parker wrote:

"As the injury was received within the waters of the United States, the learned district judge properly held that the rights of the parties were to be determined by the law of this country, the lex loci delicti."

Thus he differed squarely with Judge Swan's ruling in The Paula, on which petitioner relies.

Anderson v. *The Seirstad* (E. D. N. Y., 1926), 12 F. 2d 133, 1926 A. M. C. 564, 728, at a second stage (E. D. N. Y., 1928), 27 F. 2d 982, 1928 A. M. C. 1241,

concerned a Norwegian seaman with first U. S. papers; he was injured by negligence on board the Norwegian ship and hospitalized in New York. The Norwegian Consul appeared and stated that Anderson would have free passage to Norway and complete social relief there; however, his severe injuries might have prevented his return to New York to complete his citizenship application. The court therefore felt moved to accept jurisdiction. When the case was finally tried, Judge Campbell decided that he could not apply the Jones Act for two reasons, neither of which exists in the *Taylor* case here at bar: (1) the suit was *in rem*, and the *Plamals* case had just held that a Jones Act case may not be sued on *in rem*, overturning what had become a well-settled practice; and (2) *Resigno* v. *Jarka* had just been decided in Albany saying that the Jones Act did not apply in foreign ships. Of course Judge Campbell could not then foresee that this Court would reverse the Resigno doctrine three years later when it brought the *Uravic* case up for review.

The *Resigno* case, with the *Uravic* case, carry the matter along;

Resigno v. *Jarka* (1928), 248 N. Y. 225, 162 N. E. 13, 1928 A. M. C. 1101,

concerned a New York port longshoreman employed by Jarka, a master stevedore contractor. He was killed while working in the Lloyd steamer Hannover in 1926, during that inter-regnum when the State Compensation Law could not apply under the Jensen doctrine,

Southern Pacific v. *Jensen* (1915), 244 U. S. 205,

and the enactment of the federal Harbor Workers' Compensation Act in 1927.

To bridge that legislative gap, this Court, led by Justice Holmes, legislated that a longshoreman was a seaman while on board a ship; a tour de force, but, as he said "words are flexible."

International Stevedoring Co. v. *Haverty* (1926), 272 U. S. 50.

Thus for a space longshoremen and their widows could sue as seamen under the Jones Act, if the courts would hear them. In that situation, the New York State Court of Appeals decided that the Jones Act would not be applied by it to a longshoreman killed while working cargo on board a foreign-flag ship. The spirit of that decision was not unlike the *Sonnesen* case; indeed the Sonnesen opinion cites the *Resigno* case as authority for rejecting Sonnesen's complaint. There was no application for certiorari. But a year later another case on all fours came up, the accident having happened on board another German ship; the State courts dismissed it with a one-line reference to the *Resigno* case, but this time there was an application for certiorari which was granted; and in

Uravic v. *Jarka* (1931), 282 U. S. 234, 1931 A. M. C. 239,

this Court reversed the Resigno doctrine. Justice Holmes wrote:

> "Wise or not, it is the law, and the question is why general words should not be generally applied. What would be the alternative? Hardly that German law should be adopted. * * * It would be extraordinary to apply German law to Americans momentarily on board of a private German ship in New York."

The *Uravic* case did not merely say that American stevedores should have the Jones Act remedy when in-

jured in U. S. ports; it was much broader, and included all foreign ships and seamen, unless specifically excluded. Justice Holmes wrote:

> "But the question is not whether they were thought of for purposes of inclusion, but whether they were intentionally excluded from a description that, on its face, included them. * * * The express mention of (foreign seamen) in section 4 as to payment of wages does not help the respondent (employer), since that is a domestic matter that, unless mentioned, might be left to the parties concerned."

Thus the Jones Act, which applies to "any seaman" injured "in the course of his employment" means seamen of all kinds in all ships, unless there is an exclusionary contract or a special circumstance; it is not to be read restrictively; it does not mean merely American seamen in American ships. This Court so ruled in 1931, twenty years ago. The thought was re-stated and applied by Judge A. N. Hand in the *Kyriakos* case, described in the next pages and, it is submitted, there is no answer to it save to agree with it.

Further, Justice Holmes said, in the Uravic opinion:

> "If it should appear that by valid contract or special circumstances, seamen in a foreign ship should not be protected by the statute (the Jones Act), it will be time enough to consider the exception when it is presented. But the purport of the words is plain * * *."

In the face of that language from so high a source, it is somewhat difficult to understand the occasional re-appearance of doubts, or the opposite idea that a foreign seaman cannot have the protection of the Jones Act unless he shows a special reason for having it. The burden is the other way around; the seamen all have the benefit of the Jones Act unless some employer of a foreign seaman in a

foreign ship can show reasons why some particular seaman should not have it.

The next case arose when American nationals formed a New York corporation—The Ellis SS. Co.—and placed a ship in its name, and had the ship registered under the flag of Honduras, and chartered back to the United Fruit Company in

> *Gerradin* v. *United Fruit Co.* (E. D. N. Y., 1931), 51 F. 2d 417, 1931 A. M. C. 1425, affirmed (C. C. A. 2d, 1932) 60 F. 2d 927, 1933 A. M. C. 81, certiorari denied 287 U. S. 642,

Gerradin and all the crew were signed on and off at U. S. ports; the articles were in English, the pay in dollars; nothing distinguished the ship operation from that of the other United Fruit ships except that the flag at the stern was Honduran and not American. Gerradin was injured on the second day at sea by the negligence of a fellow-seaman, who tossed a bucket of soapy water towards the ladder which he was ascending, causing him to fall. He sued under the Jones Act; and the employer pleaded that the Jones Act did not apply on a Honduran ship at sea. The plea was flatly rejected. Judge Byers wrote:

> "In the presence of necessity the courts will look beyond the registry of a vessel in order adequately to determine a given controversy."

> *Gambera* v. *Bergoty* (the ss. Emmy), (C. C. A., 2d, 1942) 132 F. 2d 414, 1943 A. M. C. 45, rehearing at p. 47);*

concerned an Italian subject in wartime who held first papers and was signed on a Greek vessel under articles from Trenton via coastwise places to New York. He seems

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* The rehearing was not reported at 132 F. 2d 414.

to have been a temporary replacement fireman. On the second day, before passing Philadelphia, he fell down an unlighted open coal hatch. Not receiving due consideration, he sued his Greek employer under the Jones Act; the Greek employer objected that the Jones Act did not apply. Judge Coxe dismissed the objections, both under the Greek-U. S. treaty of 1902 and on discretionary grounds (S. D. N. Y.) 1940 A. M. C. 632 (not elsewhere reported). As to discretion, he wrote:

> "He has never been to Greece, he does not speak the language, the witnesses are here, and it would be a clear denial of justice if he were required to go to Greece to litigate his claim."

The Greek employer then objected that Gambera must elect between the negligence approach and the seaworthiness approach; Judge Leibell upheld that motion (S. D. N. Y.) 1940 A. M. C. 834 (not elsewhere reported), and Gambera elected for the Jones Act. The employer then moved to dismiss because the Jones Act did not apply to a foreign seaman in a foreign ship, and that motion (unreported) was granted, whereupon Gambera appealed, and the Court of Appeals reversed, saying that "the libel stated a good claim in personam which should be tried on the merits." There was a re-hearing, at which the Paula and other points were argued; Judge Learned Hand explained the Paula and affirmed the decision that the Jones Act did apply. This opinion on re-hearing is reported only at 1943 A. M. C. 47*. Certiorari was sought and denied 319 U. S. 742. Thus the foreign ship owner with his Greek flag ship finally had to deal with his injured seaman under the American Jones Act-FELA law and practice.

Kyriakos v. *Goulandris* (C. C. A. 2d, 1945), 151 F. 2d 132, 1945 A. M. C. 1041, on appeal from (S. D. N. Y., 1945), 63 F. Supp. 19, 1945 A. M. C. 439,

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* The rehearing was not reported at 132 F. 2d 414.

concerned a Greek seaman signed on a Greek ship at a U. S. port for a round voyage to England. Judge Bondy gave a Jones Act negligence decree against the registered Greek owner and the Greek partnership which managed the vessel, and also against the partners individually. On appeal, the decision was affirmed except as to the individual partners. The present case is very similar, save that Messrs. Livanos have incorporated their company in Panama instead of in Greece. In both cases the ship was operated out of U. S. ports, and the English language names were used: —there the General Steam Navigation Co. Ltd. of Greece; here the Atlantic Maritime Co. Ltd. (of Panama). The employers contended that Kyriakos had not established that they were his employers; Judge Bondy termed their evidence contradictory and evasive and confused (p. 21, col. 1, middle) but reached the conclusion that they, or some of them clearly controlled and operated the SS. Thermitor. Judge A. N. Hand agreed that at least one of them was the employer. And he wrote:

> "We are thus called upon to determine whether an alien seaman who signed on in an American port for a voyage beginning and ending in American waters can sue under the Jones Act. Although the matter is doubtful, we believe that he can".

Following Justice Holmes' argument in the *Uravic* case in 1931, he continued:

> "The right of suit given by the Jones Act was not originally so limited (to American seamen or American ships), was literally in perfectly general terms, and accordingly did not require express extension. When Congress used the word *seamen* in the Jones Act it employed a word of general application embracing men of any nation who sail the seas."

This reasoning is sound and irrefutable. The opinion is too long for inclusion here; we respectfully suggest a reading of the whole of it.

Judge Learned Hand dissented, with a half-apologetic introductory phrase: "There is much temptation to affirm this decree." But in some manner his mind went back to the days before the Seaman's Act of 1915, when it was the custom to uphold laws and treaties that allowed foreign ship operators to "crimp" their seamen, to hold them in debt-servitude for as long as three years, to withhold all their pay until the three years were over, to chase their "deserting" seamen like stray dogs. And although that was all swept away by the LaFollette Seamen's Act of 1915 his dissent revived the old formulas about internal economy and discipline under the law of the flag. For this he cited a group of cases all antedating the Jones Act except three; and of those three *Cunard* v. *Mellon* dealt with liquor in British liners under the Prohibition Act, *Grand Trunk* v. *Wright* considered an accident on a car-ferryboat across the narrow river at Detroit, and *Cain* v. *Alpha* was an ordinary common law suit for assault by an engineer upon an engine-room workman in the supposed furtherance of the employer's business. None of these cases is later in date than 1928. Of the *Mellon* case, it can be suggested that the human interest in liquor availability upon a British liner outside the three mile limit was akin to the interest in the welfare of the sick and injured seamen at sea en route to and from our ports. The case of the ferry at Detroit of course did not involve the high seas; there is no "high seas" water in the Detroit River; the confusion was only due to the fact that the Canadian Railway operated a ferry whose naked title was in an American-registry owner. The assault of Alpha's engineer on Cain was not even a Jones Act case at all, and as the vessel was American, and all the parties were American, it has no pertinence on the question of the law of the flag. The assault was in a Venezuelan port; that raised a possible question of the law of the place. But that question was not contested; Judge Swan said: *"The parties assumed,* and rightly so, that the law applicable is the gen-

eral admiralty law of the United States." (Emphasis added.)

Most interestingly there was no application for certiorari, despite Judge L. Hand's dissent.

> *Neset* v. *Christensen as Agent for Skibs A/S Oilexpress* (E. D. N. Y., 1950), 92 F. Supp. 78, 1950 A. M. C. 1832,

concerned a Norwegian one-ship company time chartered ship to an American ocean carrier which employed her in trades out of U. S. ports not going to Norway; the broker was in New York, as was the charterer, and the crew was signed on and paid off in New York. Neset, a Norwegian national living in Brooklyn, was hurt at sea, and served his summons on the Master as representative of the owner. He claimed the Jones Act right; Judge Galston upheld the service of the summons and complaint, saying that he had discretion and would exercise it in the seaman's favor. He cited *International Shoe Co.* v. *Washington*, 326 U. S. 310 (1945).

It is respectfully submitted that enough has been shown to satisfy the Court that the petitioner's brief does not disclose a new point against a disharmonious background such as to justify this Court in granting the writ. The petitioner's brief has gathered the few straws which seem to point against the prevailing wind. On examination, those straws do not persuade that the wind is unsteady or that its direction at the present day should be examined.

POINT III

Statute laws and many cases have applied U. S. law to foreign ships, shipowners and operators, passengers and seamen for a great many years, for the protection of American trade, American labor, and the general American interest. The Jones Act is only one of many examples.

In 1893, the Harter Act of Feb. 13, 1893 enacted that every bill of lading in the world, no matter how phrased or where issued, should be construed according to the policy and provisions of that statute whenever the goods arrived here. We simply do not let foreigners participate in our ocean bill of lading goods traffic in either direction—in-bound or out-bound, unless they conform their documents to our law. This was reiterated and greatly strengthened and extended by the U. S. Carriage of Goods By Sea Act of 1936 (46 U. S. Code 1300). If it is fair to tell a Panama-flag ship what shall be written into and excluded from her bill of lading issued in any foreign place, why is it not fair to tell her what shall be put into and excluded from the Articles on which the men sign to move those goods to and from our ports?

In 1851, the Limitation of Shipowners' Liability Statutes, the Fire Statute and the Valuable Cargo Statute were enacted for the benefit of all shipowners; and the Titanic owners did not hesitate to file in our admiralty court a limitation petition for British losses on the high seas wherein the ship never entered an American port even once. Their petition was accepted. The Titanic (1913), 233 U. S. 718, is one of countless examples. The foreign shipowners freely seek and obtain the benefit of our laws; why should they not also take the burdens, which rest on the American shipowner with whom they compete?

In 1936, the Sirovich amendments to the Limitation laws and in 1920 the federal High Seas Death Act gave advan-

tages to passengers who have injury and death claims against water carriers. When the Canadian cruise liner Noronic burned at her pier at Toronto with much loss of life and many personal injuries, the passengers came to Cleveland to sue the Canadian company in our courts under our laws.

> *The Noronic* (N. D. Ohio, 1950), 93 F. Supp. 549, 1950 A. M. C. 1499; further proceedings at 1950 A. M. C. 1840 (not elsewhere reported).

If fair for the passenger, why not for the seaman who is in the ship with him?

In 1890, the Stand-By Act (now 33 U. S. Code 367) declared that after a collision it is the duty to stand-by the other vessel; and that running away after collision raises a presumption of fault. This is applied to foreign ships at sea. A Greek ship that failed to stand-by after a collision at sea off the Jersey coast was held solely to blame for several reasons, one of which was the presumption of our law.

> *Theothilatus* v. *Martin* (C. C. A. 4th, 1942), 127 F. 2d 1016, 1942 A. M. C. 764.

In 1882 the Passenger Act (now 46 U. S. Code 151) provided that foreign ships arriving here with passengers and not complying with our legal standards as to accommodations and safety commit a misdemeanor; it matters not that the accommodations were lawful at the place where the passengers came aboard, or by the law of the ship's flag. This was re-expressed in broader terms in the Safety At Sea Convention of 1929, ratified in 1936 and conveniently found in the Navigation Laws of the United States, 1940 ed. pages 89-113. In ratifying that Convention, the Senate carefully appended reservations* preserving against implied attack or repeal the right of seamen to leave a ship and avoid compulsion to proceed to sea

* 50 U. S. Stat. L. 1306.

against the man's will; and also the doctrine announced by this Court in *Strathearn* v. *Dillon*, 252 U. S. 348. Thus the policy announced by this Court in favor of alien seamen in alien ships has been imbedded by the Senate in the International Convention on Safety at Sea. The interplay between the Court, the Congress and the Executive to apply American justice and policy to foreign ships and seamen who trade in and out of our ports in competition with Americans who are subject to our laws and obey them is clearly demonstrated.

The Navigation Laws contain so many examples of rules applied to foreign ships and their business, cargoes, and personnel, that it is impossible to list them all. Between 1875 and 1915, foreign interests managed to obtain some decisions that the "law of the flag" followed the foreign ship and gave her some privileges superior to our laws. In those days our American-flag shipping shrank in the face of the foreign competition which had low standards sheltered by the "law of the flag". Step by step American standards were imposed; as to passengers in 1882; as to inanimate goods—bales and boxes, in 1893; as to seamen, flesh and blood, in the Seamen's Act of 1915 and the Jones Act of 1920. The myth of foreign superiority sank with the Titanic. The fact of American excellence began to emerge in World War I and was firmly established by World War II. Our ships and our law stand comparison with the best; we do not fear that others will apply higher standards to our shipping and the problem is how to extend our standards to those who compete directly with us in our own trades. If our laws are good for passengers, for boxes, bales and bills of lading, for general averages and salvages, for every other form of human and property activity at sea, there can be no reason why they should not be equally good for the one remaining element, namely the men who man the ships that trade to and from our ports, who are hired here, paid off here, hospitalized here, and who convalesce here after illness and injury, and who—

like Taylor in the case at bar, die here of the illnesses contracted in the sea service.

The wages laws are good illustrations. Selecting chiefly Greek cases, we cite:

> *Stavridis* v. *Compania Panamena Europe de Nav. Ltda.* (S. D. N. Y.), 90 F. Supp. 187, 1951 A. M. C. 345; commissioner's report, 1951 A. M. C. 347, affirmed 1951 A. M. C. 354 (not yet elsewhere reported).

Stavridis, a Greek, signed on a Panama-flag ship for a round voyage from the United States, not to exceed a year, wages payable in Dollars. Arrived in Europe, the shipowner announced in Genoa that the ship would stay in European trades and thereafter pay wages in Pounds. Stavridis insisted on being signed off, but was inadequately paid, and left stranded at Genoa. Getting another job he returned to New York and succeeded in getting jurisdiction of the employer-shipowner; the federal court thereupon gave him his rights under his Articles, signed in a U. S. port, according to American standards of justice.

> *Kikilis* v. *Niarchos* (New York City Court), 1949 A. M. C. 709 (not elsewhere reported);

a Greek employer, who signed on a Greek seaman at New Orleans, paid him an advance of $100 and attempted to deduct this on paying off at New York; the court properly held that the advance was illegal, and could not be deducted from the wages subsequently earned. This strikes against the "crimping" system of recruiting seamen.

> *Dalmas* v. *Stathatos* (S. D. N. Y.), 84 F. Supp. 828, 1949 A. M. C. 770.

One Greek ship salvaged another by a long and difficult tow in the Pacific; the owners made a London arbitration

agreement; but the crew of the salvaging vessel sued for salvage in New York; the court upheld their right to do so.

Korthinos v. *Niarchos* (C. A., 4th, 1949), 175 F. 2d 730, 1949 A. M. C. 1135.

A Greek crew signed Articles in a U. S. port; there were serious disputes at the end of the voyage, and the crew staged a sit-in strike. The federal court took jurisdiction of all aspects of the dispute, including wage disputes hanging over from earlier voyages. The Court of Appeals, in an opinion by Judge Parker, affirmed. This Court denied certiorari, 358 U. S. 894, rehearing denied, 338 U. S. 939.

Kyparrisi v. *S. S. Joshua* (S. D. Ga., 1949), 1949 A. M. C. 1904 (not elsewhere reported).

A Panama-flag ship signed on a crew at Los Angeles and paid them off after three months at Savannah; there were wage disputes, which the federal admiralty court examined; it was found that everything due had been placed in the registry of the court, or paid to the men.

Venides v. *United Greek Shipowners* (C. A. 2d 1948), 168 F. 2d 681, 1948 A. M. C. 1437.

During the German occupation of Greece, the Greek shipowners agreed with the London Greek government in exile to deduct portions of Greek seamen's wages and put them in a London fund for the eventual relief of persons connected with shipping in Greece. The federal court held that this "allotment" system was illegal under the American statutes, because not for the direct benefit of the seaman's wife, children, etc. Hence the Greek ship, paying off in New York could not deduct those London fund sums; and the men furthermore were entitled to two days' pay for every day of delay in payment, according to our statutes.

Many more could be cited, and not all Greek or Panamanian.

POINT IV

Miscellaneous and Conclusion

We have shown that the petitioner's cases do not support the argument that an unharmonious situation exists requiring this court's attention; and that the current of Jones Act cases is strongly in the direction of the decision of the Court of Appeals in the case at bar; and that there has for a great many years been a general policy of applying our laws to alien ships, alien contracts, alien cargoes, alien passengers, as well as alien seamen who participate in our trade.

There remain only a few minor points mentioned in the petitioner's brief. It is said, for example, that Judge Learned Hand has become uncertain on the point, whereas he was very certain of it in the *Stewart* case, which he decided in 1924. That may be so; but his recent uncertainty has not been very positive. He decided the *Gambera* case in 1942, above cited, in the foreign seamen's favor, against the foreign ship. His dissent in the *Kyriakos* case is not convincing and opens with an apologetic note.

Judge Swan is also mentioned; and it seems that he has expressed himself more consistently than other judges against giving the Jones Act remedy to aliens. But he is in the steady minority.

The petitioner suggests that Taylor and his employer were fellows in nationality. Taylor seems to have been born in Panama; The Livanos partners went there to incorporate their business. These two—the man and the corporation—met in Norfolk, Va., and signed their contract—the Ship's Articles—there, for a round voyage out and back to the United States, wages payable in dollars, everything in English. That is indeed a thin veil of fellow-nationality for two Spanish-speaking, peso currency persons of Panama. It is easily seen through.

The petitioner cites some very old cases which are, we submit, irrelevant; they long ante-date the Jones and Seamen's Acts:

The Scotland (1881), 105 U. S. 24 was a collision between a British and an American vessel near Sandy Hook. Both sank, the Scotland forming the shoal which has since been guarded by a U. S. light-ship. The British owner was allowed to limit liability to nothing under our statutes, which was much more favorable than the British System limit of £8 per ton. That strongly argues that the beneficent burdens of our law should be accepted along with their beneficent advantages.

U. S. v. Rodgers (1893), 150 U. S. 249 concerned a crime on the Detroit River. It did not deal with civil liabilities or employer-employee relations.

Thompson Towing & Wrecking Assn. v. *McGregor* (C. C. A. 6th, 1913), 207 Fed. 209 also ante-dated the Jones Act. It considered the Michigan death act as available on the Great Lakes prior to the enactment of the federal High Seas Death Act. It adds nothing here.

Rainey, Admx. v. *New York & Pacific Steamship Co. Limited* (C. C. A. 9th, 1914), 216 Fed. 449 which petitioner cites does not help him. Rainey was killed, and in 1914 there was no federal statute for deaths on the high seas (1920). Nor was there a Jones Act (1920) or even a Seamen's Act (1915). The British S/S *Cacique* was on a charter to an American ship operating company, W. R. Grace & Co., for a voyage from Seattle to Peru and back to Seattle—a non-British trade. Rainey was a U. S. citizen who held U. S. and British chief engineer licenses. He signed on at the W. R. Grace office in Seattle. He died after an engine-room accident at a Peruvian port. The court found that the ship was unseaworthy and said (p. 454, top) "*So if*, instead of the injuries to Rainey having

caused his death, *he had survived* and had brought a libel for damages for injuries * * * *he could doubtless have recovered.* But Rainey died and neither his widow nor any one else can maintain a suit", etc. It was the harsh old rule that death is the composer of legal strife; that rule was swept away by the federal Death Act of 1920.

The petitioner cites *the Belgenland* (1885), 114 U. S. 335 but does not analyze it. That was a collision at sea between a Belgian ship and a Norwegian ship, the Luna, which sank. The Belgenland did not sink and eventually reached Philadelphia, where the Luna's owner libelled her. The proctor for the British ship protested. But BRADLEY, J. wrote (p. 364) that our admiralty court will take jurisdiction "where the voyage is ended, or the seamen have been dismissed, or treated with great cruelty". That lists three different situations, of which two are present in the case at bar: (1) The voyage of the *Atlantic Air* ended in the U. S. not by such an accident as collision, but because Atlantic Maritime and Livanos planned it that way and so drew the Articles which formed Taylor's contract; and (2) the seamen were dismissed, being paid off in a U. S. port according to Articles. It can be reasonably argued that the third condition was also present, namely (3) great cruelty, namely keeping a tuberculous man on board and at work from March to November until his sickness was past cure.

Further on the same page (p. 364) Justice BRADLEY says that "the case of foreign seamen is undoubtedly a special one, where they sue for wages * * *". As to that it may be remarked (1) that Justice Bradley's position about wages was reversed by Congress in the Seamen's Act of 1915, sections 4, 11 and 16 (foreign seamen sue freely for wages since 1915); and (2) the case at bar is not a wage case, but a case of illness, and negligent care thereof.

At the bottom of page 365, BRADLEY, J. further said:

"The existence of jurisdiction in all such cases is beyond dispute; the only question will be, whether it is expedient to exercise it." And (at p. 369): "As to the law which should be applied in cases between *parties*, or ships, of different nationalities arising on the high seas not within the jurisdiction of any nation, no doubt it is the general maritime law as understood and administered in the courts of the" forum. The Jones Act is part of that law.

The petition cites a U. S.-Canadian railroad case:

> *New York Central R. R.* v. *Chisholm* (1925), 268 U. S. 29.

Chisholm, a railway man, crossed the border into Canada with his train and was hurt in Canada; he sued his U. S. employer under the FELA. But in working in Canada he was working under Canadian conditions; the FELA is definitely *not* a workmen's compensation act which could operate extra-territorially (p. 31, middle).

There are a host of distinctions between that case and this. A train does not "go to sea" between the U. S. and Canadian boundaries. You never meet a Panamanian railway carrier and its employees on an American or Canadian railway line. And although we apply our Carriage of Goods Act to goods coming by sea from England, Panama and India, we do *not* apply our Pomerene Federal Bill of Lading Act, or our Carmack "initial carrier" Amendment to goods coming overland from Canada and Mexico.

> *The Pomerene Act*, now 49 U. S. Code 81;
> *Strachman* v. *Palmer* (D. Mass., 1949), 82 F. Supp. 161; modified on another point (C. A. 1st, 1949), 177 F. 2d 427;
> *Sklaroff* v. *Penn. R. R.* (E. D. Pa., 1950), 90 F. Supp. 961;
> *Columbia L. R.* Vol. 49, page 1009.

The *Chisholm* case is not at all in point.

This is not a case of power but of discretion. The federal government in its Courts and in its Congress certainly has the power to take jurisdiction over events in foreign ships at sea when the ships come to our ports, and to decide them according to the law and the public policy prevailing in the U. S. A. And it is submitted that the Court of Appeals exercised its discretion correctly.

In the course of the *Uravic* argument, counsel suggested that Congress did not mean to apply the Jones Act to foreign contracts when the parties to the contract are in the U. S. ports "only transiently" (282 U. S. 234, at 235). That conceded that it should apply when the contract is made in the U. S. and the ship is in foreign places "only transiently".

When the contract is made in our country, when the service begins here and ends here, and all its incidents are the same as when the American flag flies at the vessel's stern, discretion is correctly exercised to handle the seaman's case under American law.

The Jones Act and the Seamen's Act have long since ceased to be innovations. After thirty and thirty-five years respectively, they have become settled factors in our law. Few now active even remember the way things were before 1915. Much of our legislation of 1915 has since been expressed in multilateral conventions of the International Labor Office set up by the League of Nations and continued by the United Nations; it has spread from the more or less unique American first example into a world-wide movement. The position of the seaman is still unsatisfactory when his employer operates the ship in a trade which never touches the home port where the "law of the flag" is a living fact. In such situations he needs access to the law and the remedies of the ports where the ship actually trades. Most especially is he entitled to this when the

managers of the ship themselves are not actively found in the country which furnishes the flag and its law. Most strongly is the seaman entitled to meet his employer face to face in the courts and under the laws of the country where his employer choses to set up his principal office and in whose ports the employer choses to sign his crews on and pay them off. Taylor, a seaman signed on at Norfolk, Va. for a round voyage ending in a U. S. port, under American conditions in all other respects is clearly entitled to meet his employer in a U. S. court under the Jones Act conditions to settle the issue of liability in respect of his illness, which began while he was on the ship in its service and was aggravated by the lack of care there. The fact that he died of that illness while the employer resisted the legal claim merely points the moral.

The ruling as to which certiorari is sought presents nothing new. The petition should be denied.

A. Bradley Rankin, Administrator of the Estate of Lindeville Taylor, deceased,

By Silas Blake Axtell,
Arnold W. Knauth,
Counsel for Respondent.

New York, March 29, 1951.

FILED
APR 3 1951
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 607

ATLANTIC MARITIME COMPANY and S. LIVANOS & COMPANY, INC.,

Petitioners,

against

A. BRADLEY RANKIN, Administrator of the Estate of LINDEVILLE TAYLOR, Deceased,

Respondent.

BRIEF OF AMICI CURIAE ON BEHALF OF UNION DES ARMATEURS BELGES, BELGIUM, DANSK DAMPSKIBSREDERIFORENING, DENMARK, FINLANDS REDAREFORENING, FINLAND, THE SHIPPING FEDERATION, LTD., GREAT BRITAIN, RAAD VAN BESTUR VOOR DE ZEEVAART, HOLLAND, SKIBSFARTENS ARBEIDSGIVERFORENING, NORWAY AND SVERIGES REDAREFORENING, SWEDEN, AND CONSENT TO FILE BRIEF.

JAMES S. HEMINGWAY,
Counsel for Amici Curiae.

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IN THE

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against

A. BRADLEY RANKIN, Administrator of the Estate of LINDEVILLE TAYLOR, *Deceased,*

Respondent.

I.

CONSENT TO FILE BRIEF AS *AMICI CURIAE*, PURSUANT TO RULE 27, PARAGRAPH 9(b) OF THE RULES OF THE UNITED STATES SUPREME COURT

The undersigned, counsel for the petitioner and counsel for the respondent, hereby consent to the filing of the brief herein by James S. Hemingway as counsel for Union des Armateurs Belges, Belgium, Dansk Dampskibsrederiforening, Denmark, Finlands Redareforening, Finland, The Shipping Federation, Ltd., Great Britain, Raad van Bestur voor de Zeevaart, Holland, Skibsfartens Arbeidsgiverforening, Norway and Sveriges Redareforening, Sweden, as *amici curiae.*

Dated: New York, N. Y.,
March 30, 1951.

CLETUS KEATING
VERNON S. JONES
Counsel for Petitioner

SILAS BLAKE AXTELL
ARNOLD W. KNAUTH
Counsel for Respondent

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 607

ATLANTIC MARITIME COMPANY and S. LIVANOS & COMPANY, INC.,

Petitioners,

against

A. BRADLEY RANKIN, Administrator of the Estate of LINDEVILLE TAYLOR, *Deceased,*

Respondent.

BRIEF AS *AMICI CURIAE* IN SUPPORT OF PETITION

The undersigned, as counsel for

Union des Armateurs Belges, Belgium
Dansk Dampskibsrederiforening, Denmark
Finlands Redareforening, Finland
The Shipping Federation, Ltd., Great Britain
Raad van Bestur voor de Zeevaart, Holland
Skibsfartens Arbeidsgiverforening, Norway and
Sveriges Redareforening, Sweden

respectfully files as amici curiae the accompanying brief with the consent of the petitioner and respondent pursuant to Rule 27, paragraph 9(b) of the Rules of this Court.

JAMES S. HEMINGWAY
Counsel for Amici Curiae

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 607

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against

A. BRADLEY RANKIN, Administrator of the Estate of LINDEVILLE TAYLOR, *Deceased,*

Respondent.

BRIEF OF *AMICI CURIAE* ON BEHALF OF

Union des Armateurs Belges, Belgium
Dansk Dampskibsrederiforening, Denmark
Finlands Redareforening, Finland
The Shipping Federation, Ltd., Great Britain
Raad van Bestur voor de Zeevaart, Holland
Skibsfartens Arbeidsgiverforening, Norway and
Sveriges Redareforening, Sweden

II.

PRELIMINARY STATEMENT

The question presented on this appeal is whether the rights of an alien seaman signing ship's articles in the United States for a foreign voyage on a foreign ship is governed by the law of the flag of the vessel, where injury or illness occurs during the course of the voyage after

the vessel has left the territorial waters of the United States, or is such alien seaman entitled to the benefits of the so-called Jones Act, Section 33 of the Act of 1920 (46 U. S. C. 688), by reason of his signing ship's articles at a port in the United States.

The Court of Appeals of the State of New York has ruled that Jones Act benefits are not conferred upon an alien seaman suffering an illness on a foreign vessel while on the high seas. The fact that shipping articles were signed in a United States port does not make United States law applicable. *Sonnesen* v. *Panama Transport Co.*, 208 N. Y. 262; cert. den. 337 U. S. 919.

The United States Court of Appeals in the instant case, on an analogous set of facts, holds to the direct contrary. 179 F. (2d) 597.

A situation is therefore presented whereby an alien seaman who selects the forum of the New York State courts to prosecute an action for injury or illness sustained on the high seas on board a foreign vessel may not recover. If the action is brought for the same remedy in the United States District Court, recovery will be allowed under the Jones Act, where it appears that the seaman signed articles of engagement in a United States port.

The amici curiae herein are shipowners whose vessels trade into United States ports and fly the flags of seven of the maritime nations of the world. They engage an average of 15,000 seamen a year in United States ports. It is, of course, necessary to their operations for them to know the true nature of their respective legal rights and responsibilities in order that efficient standards may be maintained. The present sharp disparity of opinion between the New York State courts and the Federal courts concerning the rights of alien seamen and the responsibilities of foreign shipowners, has created a chaotic condition which requires clarification by this Court. It is the position of amici curiae that the engagement in the United States of an alien seaman by a foreign shipowner should not be considered as a determining factor

in awarding Jones Act benefits to him. This Court is respectfully urged to grant the petitioners' application for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit, entered in this case on December 19, 1950.

III.

ARGUMENT

The so-called Jones Act, Section 33 of the Act of June 5, 1920 (46 U. S. C. 688) does not apply to an action brought by an alien seaman against a foreign shipowner to recover for injuries or illness received while a member of the crew of such vessel outside the United States.

A seaman whose services are engaged on a foreign vessel in a port in the United States is required to sign shipping articles before a Consular officer representing the nation of the flag of the vessel. These shipping articles are a contract between the master and seaman by which, among other things, the seaman agrees to be bound by the law of the flag of the vessel during his period of service thereon. The laws of the flags of the vessels operated by the respective shipowners amici curiae afford various benefits to seaman injured in the service of the ship. The purpose of such laws is to provide uniform benefits for each crew member, irrespective of his nationality. The failure on the part of a shipowner to pay the benefits provided for by the respective laws of the flags is subject to severe penalties. It is not intended in this brief to set forth the specific laws for the protection of seamen serving on the vessels of foreign shipowners except to point out that compensation, health insurance and pension benefits are amply provided for.

While it is true that cases in this and other courts have held that the Jones Act should be liberally construed in favor of seamen, it is also true that this and other courts

have repeatedly held that this liberality of construction should not interfere with the internal economy or discipline of a ship.

The Scotland, 105 U. S. 24, 26 L. Ed. 1001;

The Belgenland, 114 U. S. 355, 5 S. Ct. 860, 29 L. Ed. 152;

United States v. *Rodgers*, 150 U. S. 249, 14 S. Ct. 109, 37 L. Ed. 1071;

Cunard S. S. Co. v. *Mellon*, 262 U. S. 100, 43 S. Ct. 504, 67 L. Ed. 894, 27 A. L. R. 1306;

Thompson Towing & Wrecking Association v. *McGregor*, 6 Cir., 207 F. 209, 217-219;

Rainey v. *New York & P. S. S. Co.*, 9 Cir., 216 F. 449, 454, L. R. A. 1916A, F. 171;

Grand Trunk R. Co. v. *Wright*, 6 Cir., 21 F. 2d 814;

Cain v. *Alpha S. S. Corp.*, 2 Cir., 35 F. 2d 717.

If the doctrine declared by the instant case is accepted as law, an alien seaman, by reason of the fact of his joining a foreign ship in a United States port would be entitled not only to Jones Act remedies but also to the benefits of the law of the flag if his injury or illness occurred on the high seas or even in the vessel's home port. This right to a two-fold recovery, it is suggested, amounts to a definite interference with the internal economy of a vessel.

Judge Learned Hand states that the rationale of the decision in *Kyriakos* v. *Goulandris*, 151 F. (2d) 132 compels a rejection of not only his and Judge Thomas W. Swan's views of the law but also compels a rejection of the decision of the New York State Court of Appeals in the *Sonnesen* case. The prevailing opinion of the Court in the *Kyriakos* case does not warrant such an interpretation. The prevailing opinion in the *Kyriakos* case was written by Judge A. N. Hand and concurred in by Judge Jerome N. Frank. A dissenting opinion was written by

Judge LEARNED HAND. The prevailing opinion states the question at page 136:

> "We are thus called upon to determine whether an alien seaman who signed on in an American port for a voyage beginning and ending in American waters can sue under the Jones Act. Although the matter is doubtful we believe that he can."

The answer to the foregoing question is set forth at page 137, and reads:

> "In the instant case libelant signed on in an American port and he was injured in an American port. We think this is sufficient both on reason and on authority."

As can be seen from the foregoing, the Court in its question set forth the factors necessary to apply the Jones Act as the place of signing of articles, the place of beginning of the voyage and the place of termination thereof, all of which are in the United States. The answer to the question makes only the place of signing articles and the place of injury material. The termination place of the voyage is not relevant. In the instant case, however, the Court does not deem the place of the happening of the illness as material but rests its decision solely upon the place where the shipping articles were signed by the seaman. Nowhere in the prevailing opinion of the *Kyriakos* case does it appear that the place of the happening of the injury is not a criterion.

A reading of the Statute, particularly the last sentence thereof, indicates clearly that Congress never intended to impose Jones Act liability upon foreign shipowners. If such was the intention it would have been so stated. It is provided in the last sentence of the Statute that jurisdiction in such actions shall be under the Court of the district *"in which the defendant employer resides or in which the principal office is located."* This part of the Statute has been construed by this Court as having to do with venue

rather than jurisdiction. *Panama R. R. Co.* v. *Johnson,* 264 U. S. 375. Assuming, however, that the venue in a suit brought under the Jones Act is laid in the district where the employer resides or in which his principal office is located, it is still a clear indication that Congress had in mind the elimination of foreign seamen and steamship-owners from the benefits and liabilities of the Act, for it is common knowledge that foreign owners of vessels have neither residences nor principal offices in this country and their business is transacted solely through agents. It is also significant that no remedy *in rem* against a vessel is permitted under the Jones Act. *Plamels* v. *S. S. Pinar Del Rio,* 277 U. S. 151.

Judge Learned Hand in writing the unanimous opinion in *O'Neill* v. *Cunard White Star, Ltd.,* 160 F. (2d) 446, cert. den. 332 U. S. 773, rejected the proposition that the Jones Act applied to an alien seaman resident in the United States who was injured on the high seas on a foreign vessel. The seaman signed shipping articles abroad and was injured on the high seas on a leg of the voyage between England and Canada. His views concerning the application of Jones Act remedies to alien seamen injured outside United States territorial waters are clearly set forth at page 448 of his opinion, reading as follows:

> "In my dissent in Kyriakos *v.* Goulandris, supra, 2 Cir., 151 F. 2d 132, 139, I collected a number of decisions which I need not repeat now, which held that the law of the flag would ordinarily prevail. In the case at bar the situation is just reversed: we are to say, not when the Jones Act should give place to the law of the flag, but when the law of the flag should give place to the Jones Act in places where the Jones Act does not expressly apply. It is true that a state may impose duties upon its own nationals while they are abroad; Blackmer *v.* United States, 284 U. S. 421, 52 S. Ct. 252, 76 L. Ed. 375, but the plaintiff must prove that Congress meant to impose duties upon the nationals of other states while they were beyond the territorial limits of the United States, a proposition vastly different in its consequences. Perhaps Congress might

go even so far as that, granted an occasion pressing enough; but surely there should be the clearest warrant of its purpose to do so, for it is as extreme an exercise of power as one can well imagine: a bit of absolution beyond all ordinary conventions."

From the foregoing it is apparent in the view of Judge LEARNED HAND that the Jones Act was not intended to apply to alien seamen sustaining injury on foreign ships on the high seas. Although the *O'Neill* case was decided some time subsequent to the *Kyriakos* case, the unanimous court apparently did not consider the rationale of the *Kyriakos* case as decisive. There does not appear to be any sound reason for reverting to such rationale in deciding the instant case.

IV.

CONCLUSION

It is respectfully submitted that this Court should grant the petitioners' application for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit entered in this case on December 19, 1950.

Dated: New York, N. Y.,
March 30, 1951.

Respectfully submitted,

UNION DES ARMATEURS BELGES, Belgium
DANSK DAMPSKIBSREDERIFORENING, Denmark
FINLANDS REDAREFORENING, Finland
THE SHIPPING FEDERATION, LTD., Great Britain
RAAD VAN BESTUR VOOR DE ZEEVAART, Holland
SKIBSFARTENS ARBEIDSGIVERFORENING, Norway
and
SVERIGES REDAREFORENING, Sweden

By JAMES S. HEMINGWAY,
Counsel for Amici Curiae

FILED
APR 12 1951
CHARLES ELMORE CRO
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 607

ATLANTIC MARITIME COMPANY and S. LIVANOS & COMPANY, INC.,

Petitioners,

against

A. BRADLEY RANKIN, Administrator of the Estate of LINDEVILLE TAYLOR, Deceased,

Respondent.

BRIEF AS *AMICUS CURIAE* OF FRIENDS OF ANDREW FURUSETH LEGISLATIVE ASSOCIATION, IN OPPOSITION TO PETITION FOR CERTIORARI; AND CONSENT TO FILE BRIEF

CHARLES A. ELLIS,
Counsel for *Amicus Curiae*.

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Petitioners,

against

A. BRADLEY RANKIN, Administrator of the Estate of LINDEVILLE TAYLOR, Deceased,

Respondent.

I. Consent to file brief as *amicus curiae*, pursuant to Rule 27, Par. 9(b), of the court's rules.

The undersigned, counsel for the parties herein, hereby consent to the filing of the within brief by Charles A. Ellis as counsel for Friends of Andrew Furuseth Legislative Association, as *amicus curiae*.

Dated, New York, N. Y., April 9th, 1951.

CLETUS KEATING,
VERNON S. JONES,
Counsel for Petitioners.

SILAS BLAKE AXTELL,
ARNOLD W. KNAUTH,
Counsel for Respondent.

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Respondent.

BRIEF AS *AMICUS CURIAE* OF FRIENDS OF ANDREW FURUSETH LEGISLATIVE ASSOCIATION, IN OPPOSITION TO THE PETITION.

II. Preliminary Statement.

In view of the Court's Rule (27, par. 9(b)) that *amicus curiae* briefs prior to consideration of a petition for writ of certiorari are "not favored", we would not file this Brief except for one circumstance of the case affecting other litigants, including members of *amicus curiae,* as much as and perhaps more than the parties.

But this Court has indicated that the question of propriety, as distinct from the question of power, as to issuance of a writ may be foreclosed by issuance of the writ (*Forsyth* v. *Hammond,* 166 U. S. 506, 511).

And a comparison of the *record* herein with the Petition, Respondent's Brief in opposition, and the Brief of seven

European underwriters as *amici curiae* in support, discloses such a hiatus between the *record* and the proposed questions and reasons assigned for a writ, and renders the proposed questions so hypothetical at this interlocutory stage that the point should be stressed at this time. Otherwise, the rights of other litigants, particularly impoverished injured seamen not parties hereto but having claims which might be controlled by a hypothetical decision, may be gravely prejudiced if the interlocutory judgment be reviewed before any trial of the case, and if a decision be rendered on hypothetical questions without opportunity for the parties first to establish the facts at a trial.

III. Argument.

The Court of Appeals decision that the case should be tried is interlocutory and not final; the record does not adequately present the questions sought to be reviewed here; and it would be highly prejudicial to other litigants to review these questions hypothetically.

The principal ground alleged in the Petition for allowance of a writ and in the Brief of seven European underwriters as *amici curiae* in its support is an asserted conflict with *Sonnesen* v. *Panama Transport Company*, 298 N. Y. 262, cert. denied 337 U. S. 919, appl. denied 337 U. S. 961.

But, apart from distinctions noted in Respondent's Brief, which we shall not repeat, there are two basic and fundamental differences of immediate importance, viz.:

(1) The *Sonnesen* decision was rendered after trial of the case and rendition of judgment, whereas the case at bar involves merely interlocutory remand of a case for trial.

(2) In the *Sonnesen* case, the Court had before it a record containing all the facts, whereas the record

herein contains, besides the complaint, only an attorney's affidavit containing the barest of selfserving conclusions from a few homely expressions attributed to the seaman plaintiff-respondent respecting his "home", and allegations from the complaint as to the place of incorporation of defendants-Petitioners.

The case of *Kyriakos* v. *Goulandris,* C. C. A. 2, 151 F. 2d. 132, stressed in the Petition and other briefs, was also a case where all the facts had been established at trial.

While this Court has power to review even interlocutory judgments or decrees where the record shows facts making an immediate review of vital importance (*Gay* v. *Ruff,* 292 U. S. 25, 30-31), the Court's established policy is that except in extraordinary cases of peculiar gravity and pressing importance shown by the *record,* a writ will not be granted until final judgment or decree (*Hamilton-Brown Shoe Co.* v. *Wolf Brothers & Co.,* 240 U. S. 251, 258; *American Construction Co.* v. *Jacksonville, Tampa & Key West Railway Co.,* 148 U. S. 372, 384; *United States* v. *General Motors Corp.,* 323 U. S. 373, 377; *Land* v. *Dollar,* 330 U. S. 731, 734, footnote 2; *Catlin* v. *United States,* 324 U. S. 229, 233-234; *Cohen* v. *Beneficial Industrial Loan Corp.,* 337 U. S. 541, 546). There must be involved a ruling which either is decisive of, or "is fundamental to the further conduct of the case" (*United States* v. *General Motors Corp.,* supra, 323 U. S. at 377).

In this case, whether any of the questions sought to be raised shall really arise, and if so, their scope and form and their answer (if not already settled law) will depend upon *"the realities of the record"* (*Indianapolis* v. *Chase Nat. Bank,* 314 U. S. 63, 69, italics ours), after all the facts are proved at a trial.

But, instead of a final judgment and trial record showing all the facts, we have here merely an interlocutory remand for trial. The defendants, indeed, have not as yet even filed answers.

The material part of the record (pp. 9-13) consists of an attorney's affidavit of less than five pages, containing *no facts whatsoever concerning the Petitioner companies, other than quotations from the complaint of allegations as to the place of their incorporation.* Compare *Kyriakos* v. *Goulandris, supra;* compare also Respondent's Brief in opposition, pages 1-2.

If the seaman were petitioning for review of the partial affirmance of dismissal below— "As to any claim under the maritime law" (179 F. 2d. 598)—an important question would be presented, in final and not interlocutory form, perforce the dismissal and the very inadequacy of the attorney's affidavit as ground for such dismissal.

But as the seaman is not petitioning, and only the shipowner and operator are, the attorney's affidavit and the interlocutory remand for trial are wholly inadequate to present the questions proposed for review. Trial may establish a case, from the facts as to Petitioners' organizational make-up and methods of operation, disclosing that the questions now sought to be prematurely reviewed are not even involved, and with liability resting, indeed, on grounds in which the seven European *amici curiae* could have no interest.

The importance of this affects others than the parties. To allow the attorney to say, or rather merely *suggest* in the bare manner he has—the simplest conclusion of a hearsay nature—that the seaman and his sea-craft activities and the Panamanian corporations and their operations are not subject to the Jones Act or American maritime law—including the Shipowners Liability (Sick & Injured Seamen) Convention as to maintenance and cure—merely because the seaman came from abroad originally and because the corporations were incorporated in Panama "is to beg the question to be decided" under proven facts (*International Shoe Co.* v. *Washington,* 326 U. S. 310, 316).

Both the Jones Act and the Convention represent national policy, the latter equally with the former equivalent to statutory policy; and "It has often been held that the interposition of a corporation will not be allowed to defeat a legislative policy, whether that was the aim or only the result of the arrangement" (*Anderson* v. *Abbott*, 321 U. S. 349, 362-363). As a trial would disclose, the petitioning corporations are "a mere department of" their owner's American business (cf. *United States* v. *Lehigh Valley R. R. Co.*, 220 U. S. 257, 273). (See Respondent's Brief in Opposition pp. 1-2). The motion made in the District Court and the Petition here are designed to seek, by premature ruling, without disclosure by defendants of this their actual status, a rule that will avoid such a disclosure and avoid the whole statutory policy of both the Jones Act and the Convention by the simple device of an attorney pointing out that Petitioners were incorporated abroad. They seek a precedent also for accomplishing this by the same device in all other such cases, so that no disclosure, by answer, affidavit or evidence at trial need ever be made as to a shipowner's actual status. Until a record be made by trial this "is to beg the question" upon which, basically, their liability may be determined by proven facts at trial, without even reaching any of the questions now urged for review.

Many seamen, having, as yet, alien nationality, and both with and without legal residence in the United States, ship out of American ports annually pursuant to articles signed here, and frequently upon vessels destined for a round trip voyage ending here. Some ships, with these and other alien as well as American nationals as crew members, recruited here, are registered in the name of or nominally are owned by alien, particularly Panamanian corporations, which as to actual ownership and everything except the technical device of corporate certificate, are in reality American owned behind the fictitious foreign front. Others, competing with them and with American shipping, use the

same device for alien owners, who have taken note of the apparent advantages of the masquerade as "Panamanian nationals." Still other strictly alien vessels and shipowners, with the precedent set by those masquerading as "Panamanian" and therefore as "alien," are enabled to compete in similar manner with American shipping without even troubling to employ the masquerade. They recruit crews, sign articles, insure liability risks and take on cargoes here, with other cargoes taken on abroad for return here, and with the articles—signed here—calling for discharge here at the voyage end; with the program then repeated for the subsequent voyage. Each case will differ radically according to the facts proved at trial.

All alike, however, including the American insurers covering the liability risks, then employ the tactic, when a man recruited and signed on here is injured, of seeking to demur to any claim by asserting that the injured claimant must first present himself at the "home" office—whether it be a mere statutory address or in reality a "principal" place of ultimate ownership. Often this is with fore-knowledge, possibly pre-design, that the man, now accustomed to the American way of life and liking it, and liking shipping under American signed articles, and possibly knowing that the company's wealth, ownership, real management and insurance coverage are all here, will decline a suggestion that he "return" to a foreign place from which he was not recruited and where possibly he never even had visited. It is, in any case, with the design and frequent result of shipowner and insurer shrugging off and adding to the profit column for deposit or distribution here any measure of liability.

If suit is brought, American attorneys are then employed, by shipowner or insurer alike, for a fraction of the liability-escaping profit, to plead solemnly in Court that the barest suggestion, from paper "incorporation" under some foreign law, that "aliens" are involved, must control the

Court's discretion and occasion an order "declining to accept jurisdiction" (R., p. 8), even before answer filed; and that no factual disclosure need be made by the movant nor shall be permitted to be elicited by the injured man as to the reality of the suggested paper front. Such motions are designed, by obtaining summary dismissal at the outset, to escape any examination at trial by a doubting Court into the reality of the device, or consideration by a Court, in the light of a trial record, of the best theory of American national or judicial policy, or equitable determination of rights and liabilities according to the proven facts (*Cf. Kyriakos* v. *Goulandris, supra*). This practice should not be encouraged by honoring such empty motions with needless review here when the case has been remanded for trial.

This Court has recently reviewed the Shipowners Liability (Sick and Injured Seamen) Convention in *Warren* v. *United States*, No. 87, October Term 1950, wherein six years after injury and expenditure the seaman was able finally to recover his maintenance and cure. Article 9 of the Convention calls for "rapid and inexpensive settlement of disputes"; and Article 11 provides for interpretation of the Convention and national laws relating to benefits thereunder "to secure equality of treatment to all seamen *irrespective of nationality, domicile* or race."

The same policy as to liberal interpretation and rapid adjustment of claims is inherent in the Jones Act. Tactics designed for piecemeal certiorari reviews, while the shipowner and insurer omit even to file answers are no part of its liberal policy.

If, therefore, contrary to our belief we should assume that, despite the many decisions which have interpreted practically every word of the Jones Act, any questions such as stated in the Petition herein might still be open in a proper case for further review, we urge that any such review should not be had upon an interlocutory order and

empty record such as this—should not be had, indeed, unless a record be presented containing *proof* that what is pretended as the premise for a review is not the most shallow masquerade or pretense—nor until the case, including the inherent questions of fact and masquerade, has been fully tried below and final judgment rendered.

IV. Conclusion.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

CHARLES A. ELLIS,
Counsel for FRIENDS OF ANDREW FURUSETH LEGISLATIVE ASSOCIATION, as *Amicus Curiae*.

New York, April 9th, 1951.

FILED
APR 18 1951
CHARLES ELMORE CROPL
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 607

ATLANTIC MARITIME COMPANY and S. LIVANOS & COMPANY, INC.,

Petitioners,

against

A. BRADLEY RANKIN, Administrator of the Estate of LINDEVILLE TAYLOR, Deceased,

Respondent.

BRIEF AS *AMICUS CURIAE* OF DANISH SAILOR'S & FIREMEN'S UNION, IN OPPOSITION TO PETITION FOR CERTIORARI; AND CONSENT TO FILE BRIEF

JACOB RASSNER,
Counsel for Amicus Curiae.

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In the

Supreme Court of the United States

October Term, 1950

No. 607

Atlantic Maritime Company and S. Livanos & Company, Inc.,

Petitioners,

against

A. Bradley Rankin, Administrator of the Estate of Lindeville Taylor, Deceased,

Respondent.

I. Consent to file brief as *amicus curiae*, pursuant to Rule 27, Par. 9 (b) of the Court's rules.

The undersigned, counsel for the parties herein, hereby consent to the filing of the within brief by Jacob Rassner, as counsel for Danish Sailor's & Firemen's Union, as *amicus curiae*.

Dated, New York, N. Y., April 11, 1951.

Cletus Keating,
Vernon S. Jones,
Counsel for Petitioners.

Silas Blake Axtell,
Arnold W. Knauth,
Counsel for Respondent.

IN THE

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OCTOBER TERM, 1950.

No. 607.

ATLANTIC MARITIME COMPANY and S. LIVANOS & COMPANY, INC.,

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A. BRADLEY RANKIN, Administrator of the Estate of LINDEVILLE TAYLOR, Deceased,

Respondent.

BRIEF AS *AMICUS CURIAE* OF DANISH SAILOR'S & FIREMEN'S UNION, IN OPPOSITION TO THE PETITION

II. Preliminary statement.

This brief is respectfully submitted on behalf of Danish Sailor's & Firemen's Union as *amicus curiae*. The members of such Union would be gravely affected by any review and determination of questions such as proposed in the petition hypothetically upon any such record and interlocutory judgment as that presented herein.

III. Argument.

The record and interlocutory judgment do not present the questions proposed for review. They should not be reviewed hypothetically.

In the interests of brevity, we refer the Court first to the brief as *amicus curiae* of Friends of Andrew Furuseth Legislative Association filed herein.

We adopt such brief fully, and wish to add the following:

If we assume that the questions proposed in the petition are still open for review by this Court, the very importance claimed in the petition for the proposed questions itself emphasizes that they should not be reviewed or determined where there is involved a mere interlocutory remand for trial and where the record contains no more evidence bearing upon their determination than the one here contains.

In *Kennedy* v. *Silas Mason Co.*, 334 U. S. 249, 256-257, this court, in a case where a summary judgment was vacated without passing on any of the questions of law or liability, has recently cautioned against summary reviews or determinations on deficient records or without a trial saying:

> "The short of the matter is that we have an extremely important question. * * * No conclusion in such a case should prudently be rested on an indefinite factual foundation. * * * The case * * * comes to us almost in the status in which it should come to a trial court. * * * But summary procedures, however salutary where issues are clearcut and simple, *present a treacherous record for deciding issues of far-flung import,* on which this court should draw inferences with caution from complicated courses of legislation, contracting and practice.
>
> "*We consider it the part of good judicial administration to withhold decision of the ultimate questions involved in this case until this or another record shall present a more solid basis of findings based on litigation* or on a comprehensive statement of agreed facts. While we might be able, on the present record, to reach a conclusion that would decide the case, it might well be found later to be lacking in the thoroughness that should precede judgment of this im-

portance and which it is the purpose of the judicial process to provide.

"Without intimating any conclusion on the merits, we vacate the judgment below and remand the case to the District Court for reconsideration and amplification of the record in the light of this opinion and of present contentions" (334 U. S. 256-257). (Italics ours.)

In *Eccles* v. *Peoples Bank*, 333 U. S. 426, at 434, this court said:

"Judgment on issues of public moment based on such evidence, not subject to probing by judge and opposing counsel, *is apt to be treacherous. Caution is appropriate against the subtle tendency to decide public issues free from the safeguards of critical scrutiny of the facts*, through use of a declaratory summary judgment" (333 U. S. 434). (Italics ours.)

As the case has been remanded for trial—to the end that the parties may be enabled by trial to establish the facts—there is neither necessity nor propriety for a review by certiorari. At this interlocutory stage, moreover, the review would be entirely hypothetical in view of the total lack of controlling facts in the record.

IV. Conclusion.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

Jacob Rassner,
Counsel for
Danish Sailor's & Firemen's
Union, as *Amicus Curiae*.